Tab 1	**SB 12** by **Garcia (CO-INTRODUCERS) Galvano, Ring**; (Compare to CS/CS/CS/H 0439) Mental Health and Substance Abuse

821992	PCS	S	RCS	AP		02/18 05:12 PM
654058	PCS:D	S	RCS	AP, Garcia	Delete everything after	02/18 05:12 PM

Tab 2	**CS/SB 122** by **CJ, Joyner, Bradley**; (Similar to CS/H 0331) Compensation of Victims of Wrongful Incarceration

Tab 3	**SB 394** by **Hays**; (Identical to H 0303) Unlicensed Activity Fees

Tab 4	**SB 422** by **Benacquisto**; (Similar to CS/H 0363) Health Insurance Coverage For Opioids

Tab 5	**SB 444** by **Montford**; (Identical to H 0525) Small Community Sewer Construction Assistance Act

Tab 6	**CS/SB 548** by **BI, Richter**; (Similar to CS/CS/H 0413) Title Insurance

517060	PCS	S	RCS	AP, AGG		02/18 05:42 PM

Tab 7	**CS/SB 580** by **HP, Grimsley**; (Similar to CS/H 0595) Reimbursement to Health Access Settings for Dental Hygiene Services for Children

Tab 8	**CS/SB 636** by **CJ, Benacquisto (CO-INTRODUCERS) Flores, Joyner**; (Identical to CS/CS/H 0179) Evidence Collected in Sexual Offense Investigations

763638	A	S	RCS	AP, Benacquisto	Delete L.84 - 87:	02/18 05:31 PM

Tab 9	**CS/CS/SB 676** by **BI, HP, Grimsley**; (Compare to H 0423) Access to Health Care Services

243646	A	S	RCS	AP, Grimsley	btw L.800 - 801:	02/18 05:02 PM

Tab 10	**CS/SB 684** by **ED, Gaetz, Stargel**; (Compare to CS/H 0031) Choice in Sports

434300	PCS	S	RCS	AP, AED		02/18 05:16 PM

Tab 11	**CS/SB 708** by **GO, Joyner**; (Compare to CS/CS/H 0533) Arthur G. Dozier School for Boys

726460	PCS	S	RCS	AP, ATD		02/18 05:07 PM
482384	PCS:A	S	RCS	AP, Joyner	btw L.143 - 144:	02/18 05:07 PM

Tab 12	**CS/SB 800** by **HE, Brandes**; (Compare to CS/H 1053) Private Postsecondary Education

380416	PCS	S	RCS	AP, AED		02/18 05:18 PM

Tab 13	**SB 806** by **Legg**; (Similar to H 0585) Instruction for Homebound and Hospitalized Students

Tab 14	**SB 834** by **Detert**; (Compare to CS/CS/1ST ENG/H 7029) Minimum Term School Funding

Tab 15	**CS/SB 894** by **ED, Detert**; (Similar to CS/CS/H 0719) Education Personnel

237190	A	S	RCS	AP, Simmons	Delete L.61 - 69.	02/18 05:06 PM

Tab 16	**SB 922** by **Montford**; (Similar to CS/H 0987) Solid Waste Management

622386	PCS	S	RCS	AP, AGG		02/18 05:25 PM

Tab 17	**CS/SB 966** by **BI, Benacquisto (CO-INTRODUCERS) Gaetz, Brandes, Negron, Bean, Hutson, Richter, Detert**; (Compare to H 1041) Unclaimed Property

Tab 18	**CS/SB 992** by **BI, Brandes**; (Similar to CS/CS/CS/H 0651) Department of Financial Services

841824	PCS	S	RCS	AP, AGG		02/18 05:20 PM
432618	PCS:A	S	RCS	AP, Benacquisto	Delete L.374 - 386:	02/18 05:20 PM
702190	PCS:A	S	RCS	AP, Benacquisto	btw L.508 - 509:	02/18 05:20 PM

Tab 19	**SB 994** by **Negron (CO-INTRODUCERS) Sobel, Flores**; (Similar to H 0819) Sunset Review of Medicaid Dental Services

Tab 20	**CS/SB 1026** by **ED, Simmons**; (Compare to CS/H 0031) High School Athletics

356798	PCS	S	RCS	AP, AED		02/18 05:43 PM

Tab 21	**CS/CS/SB 1118** by **JU, BI, Simmons**; (Compare to CS/CS/1ST ENG/H 0509) Transportation Network Company Insurance

~~107054~~	A	S	L	WD	AP, Simmons	Delete L.162 - 316:	02/18 05:40 PM

Tab 22	**CS/SB 1176** by **EP, Diaz de la Portilla**; (Similar to H 0795) Dredge and Fill Activities

Tab 23	**CS/SB 1426** by **CA, Stargel (CO-INTRODUCERS) Gaetz**; (Similar to CS/H 1155) Membership Associations

Tab 24	**CS/SB 1584** by **TR, Smith (CO-INTRODUCERS) Thompson, Joyner**; (Similar to H 0787) Suspended Driver Licenses

Tab 25	**SB 7058** by **ED**; (Similar to CS/1ST ENG/H 7053) Child Care and Development Block Grant Program

447038	D	S	RCS	AP, Galvano	Delete everything after	02/18 05:07 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Lee, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Thursday, February 18, 2016
TIME: 1:00—5:30 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Lee, Chair; Senator Benacquisto, Vice Chair; Senators Altman, Flores, Gaetz, Galvano, Garcia, Grimsley, Hays, Hukill, Joyner, Latvala, Margolis, Montford, Negron, Richter, Ring, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	A proposed committee substitute for the following bill (SB 12) is available:		
1	**SB 12** Garcia (Compare CS/CS/CS/H 439, CS/H 979, CS/H 7097, S 1336)	Mental Health and Substance Abuse; Including services provided to treatment-based mental health programs within case management funded from state revenues as an element of the state courts system; specifying certain persons who are prohibited from being appointed as a person's guardian advocate; authorizing county or circuit courts to enter ex parte orders for involuntary examinations; revising the criteria for involuntary admissions due to substance abuse or co-occurring mental health disorders, etc. CF 01/14/2016 Favorable AHS 01/26/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0
	With subcommittee recommendation – Health and Human Services		
2	**CS/SB 122** Criminal Justice / Joyner / Bradley (Similar CS/H 331)	Compensation of Victims of Wrongful Incarceration; Providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to any violent felony, or was serving a concurrent sentence for another felony; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation, etc. CJ 11/02/2015 Fav/CS JU 01/20/2016 Favorable ACJ 02/11/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
	With subcommittee recommendation – Criminal and Civil Justice		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 394** Hays (Identical H 303)	Unlicensed Activity Fees; Prohibiting the Department of Business and Professional Regulation from imposing a specified fee in certain circumstances, etc. RI 11/18/2015 Favorable AGG 01/13/2016 Favorable AP 02/18/2016 Favorable With subcommittee recommendation – General Government	Favorable Yeas 14 Nays 0
4	**SB 422** Benacquisto (Similar CS/H 363)	Health Insurance Coverage For Opioids; Providing that a health insurance policy that covers opioid analgesic drug products may impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the insurer imposes the same requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim, etc. BI 11/02/2015 Favorable HP 12/01/2015 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
5	**SB 444** Montford (Identical H 525)	Small Community Sewer Construction Assistance Act; Redefining the term “financially disadvantaged small community” to include counties and special districts; defining the term “special district”, etc. CA 01/19/2016 Favorable AGG 01/26/2016 Favorable AP 02/18/2016 Favorable With subcommittee recommendation – General Government	Favorable Yeas 15 Nays 0
	A proposed committee substitute for the following bill (CS/SB 548) is available:		
6	**CS/SB 548** Banking and Insurance / Richter (Similar CS/CS/H 413)	Title Insurance; Increasing a title insurer’s limit of risk from one-half of its surplus as to policyholders to the entirety of its surplus; revising an exception to the limit, etc. BI 11/17/2015 Fav/CS AGG 01/13/2016 Fav/CS AP 02/18/2016 Fav/CS With subcommittee recommendation – General Government	Fav/CS Yeas 15 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 580** Health Policy / Grimsley (Similar CS/H 595)	Reimbursement to Health Access Settings for Dental Hygiene Services for Children; Authorizing reimbursement for children's dental services provided by licensed dental hygienists in certain circumstances, etc. HP 12/01/2015 Fav/CS AHS 01/13/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 14 Nays 0
	With subcommittee recommendation – Health and Human Services		
8	**CS/SB 636** Criminal Justice / Benacquisto (Identical CS/CS/H 179, Compare H 167, H 1331, S 368, S 1614)	Evidence Collected in Sexual Offense Investigations; Requiring that a sexual offense evidence kit or other DNA evidence be submitted to a member of the statewide criminal analysis laboratory system within a specified timeframe after specified occurrences; requiring a medical provider or law enforcement agency to inform an alleged victim of a sexual offense of certain information relating to sexual offense evidence kits; requiring the testing of sexual offense evidence kits within a specified timeframe after submission to a member of the statewide criminal analysis laboratory, etc. CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Favorable AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0
	With subcommittee recommendation – Criminal and Civil Justice		
9	**CS/CS/SB 676** Banking and Insurance / Health Policy / Grimsley (Similar S 210, S 428, Compare H 423, H 471, CS/H 977, S 586, CS/S 1250)	Access to Health Care Services; Expanding the categories of persons who may prescribe brand name drugs under the prescription drug program when medically necessary; requiring a hospital to provide specified advance notice to certain obstetrical physicians before it closes its obstetrical department or ceases to provide obstetrical services; requiring the Board of Nursing to establish a committee to recommend a formulary of controlled substances that may not be prescribed, or may be prescribed only on a limited basis, by an advanced registered nurse practitioner; requiring that certain health insurers that do not already use a certain form use only a prior authorization form approved by the Financial Services Commission, etc. HP 01/11/2016 Fav/CS BI 01/26/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0

A proposed committee substitute for the following bill (CS/SB 684) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**CS/SB 684** Education Pre-K - 12 / Gaetz / Stargel (Compare CS/H 31, CS/CS/CS/H 669, H 7039, S 886, CS/S 1026)	Choice in Sports; Revising public school choice options available to students to include CAPE digital tools, CAPE industry certifications, and collegiate high school programs; requiring each district school board and charter school governing board to authorize a parent to have his or her child participate in controlled open enrollment; requiring the Florida High School Athletic Association to allow a private school to maintain full membership in the association or to join by sport, etc. ED 01/14/2016 Fav/CS AED 01/25/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 14 Nays 0

With subcommittee recommendation – Education

A proposed committee substitute for the following bill (CS/SB 708) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/SB 708** Governmental Oversight and Accountability / Joyner (Compare CS/CS/H 533)	Arthur G. Dozier School for Boys; Directing the Department of State to preserve historical resources, records, archives, and artifacts; directing the department to reimburse the next of kin of children whose bodies are buried and exhumed at the Dozier School or to pay directly to a provider for the costs associated with funeral services, reinterment, and grave marker expenses; establishing a task force to make recommendations regarding a memorial and a location of a site for the reinterment of unidentified or unclaimed remains, etc. GO 01/26/2016 Fav/CS ATD 02/11/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0

With subcommittee recommendation – Transportation, Tourism, and Economic Development

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A proposed committee substitute for the following bill (CS/SB 800) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**CS/SB 800** Higher Education / Brandes (Compare CS/H 1053)	Private Postsecondary Education; Requiring certain institutions to provide a student with a written disclosure of all fees and costs that the student will incur to complete his or her program; revising the membership of the Commission for Independent Education; revising the criteria for licensure by means of accreditation; revising the institutions included in the Student Protection Fund to include licensed institutions, etc. HE 01/25/2016 Fav/CS AED 02/11/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 14 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – Education		
13	**SB 806** Legg (Similar H 585)	Instruction for Homebound and Hospitalized Students; Requiring school districts to provide instruction to homebound or hospitalized students; requiring the State Board of Education to adopt rules related to student eligibility, methods of providing instruction to homebound or hospitalized students, and the initiation of services; requiring each school district to enter into an agreement with certain hospitals within its district by a specified date, etc. ED 01/20/2016 Favorable AED 01/28/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
	With subcommittee recommendation – Education		
14	**SB 834** Detert (Compare CS/CS/H 7029, CS/S 830, S 1136)	Minimum Term School Funding; Revising the term "full-time student" to delete references to membership in a double-session school or a school that uses a specified experimental calendar; clarifying how "full time equivalency" is calculated for students in schools that operate for less than the minimum term, etc. ED 01/27/2016 Favorable AED 02/11/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
	With subcommittee recommendation – Education		
15	**CS/SB 894** Education Pre-K - 12 / Detert (Similar CS/CS/H 719, Compare H 5003, CS/H 7043)	Education Personnel; Authorizing certain information to be used for educator certification discipline and review; authorizing certain employees or agents of the Department of Education to have access to certain reports and records; authorizing rather than requiring the Department of Education to sponsor a job fair meeting certain criteria; providing requirements regarding liability insurance for students performing clinical field experience, etc. ED 01/20/2016 Fav/CS AED 02/11/2016 Favorable AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0
	With subcommittee recommendation – Education		

A proposed committee substitute for the following bill (SB 922) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**SB 922** Montford (Similar CS/H 987, Compare CS/S 1052)	Solid Waste Management; Providing for the funding of a waste tire abatement program from the Solid Waste Management Trust Fund up to a specified percentage of total funds; authorizing the Department of Environmental Protection to use account funds to contract with a third party for the closing and long-term care of solid waste management facilities under specified circumstances; authorizing waste tire abatement programs under the small county consolidated grant program, etc. EP 01/20/2016 Favorable AGG 02/11/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0
	With subcommittee recommendation – General Government		
17	**CS/SB 966** Banking and Insurance / Benacquisto (Compare H 1041)	Unclaimed Property; Revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; requiring an insurer to compare records of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File or a certain database or service to determine if a death is indicated; providing the circumstances under which a policy, a contract, or an account is deemed to be in force, etc. BI 01/11/2016 Temporarily Postponed BI 01/19/2016 Fav/CS AGG 02/11/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
	With subcommittee recommendation – General Government		
	A proposed committee substitute for the following bill (CS/SB 992) is available:		
18	**CS/SB 992** Banking and Insurance / Brandes (Similar CS/CS/H 651, Compare CS/CS/H 593, CS/CS/H 879, CS/CS/S 686)	Department of Financial Services; Authorizing the Department of Financial Services to create an Internet-based transmission system to accept service of process; authorizing the Chief Financial Officer, with the approval of the State Board of Administration, to include specified employees other than state employees in a deferred compensation plan; revising certain standards for carbon monoxide detector devices in specified spaces or rooms of public lodging establishments; revising firefighter and volunteer firefighter certification requirements, etc. BI 01/19/2016 Fav/CS AGG 02/11/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – General Government		
19	**SB 994** Negron (Similar H 819)	Sunset Review of Medicaid Dental Services; Providing for the future removal of dental services as a minimum benefit of managed care plans; requiring the agency to implement a statewide Medicaid prepaid dental health program upon the occurrence of certain conditions; specifying requirements for the program and the selection of providers, etc. HP 01/11/2016 Favorable AHS 01/26/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
	With subcommittee recommendation – Health and Human Services		
	A proposed committee substitute for the following bill (CS/SB 1026) is available:		
20	**CS/SB 1026** Education Pre-K - 12 / Simmons (Compare CS/H 31, H 7039, CS/S 684)	High School Athletics; Providing requirements regarding fees and contest receipts collected by the Florida High School Athletic Association (FHSAA); requiring the FHSAA to allow a school to join the FHSAA as a full-time member or on a per-sport basis; providing a process for resolving student eligibility disputes, etc. ED 01/14/2016 Fav/CS AED 02/11/2016 Fav/CS AP 02/18/2016 Fav/CS	Fav/CS Yeas 13 Nays 0
	With subcommittee recommendation – Education		
21	**CS/CS/SB 1118** Judiciary / Banking and Insurance / Simmons (Compare CS/CS/H 509)	Transportation Network Company Insurance; Requiring a statement in certain crash reports as to whether any driver at the time of the accident was providing a prearranged ride or logged into a digital network of a transportation network company; requiring a transportation network company driver, or the transportation network company on the driver's behalf, to maintain certain primary automobile insurance under certain circumstances; requiring a transportation network company to maintain certain insurance and obligate the insurer to defend a certain claim if specified insurance by the driver lapses or does not provide the required coverage, etc. BI 01/19/2016 Fav/CS JU 02/09/2016 Fav/CS AP 02/18/2016 Favorable	Favorable Yeas 11 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**CS/SB 1176** Environmental Preservation and Conservation / Diaz de la Portilla (Similar H 795)	Dredge and Fill Activities; Revising the acreage of wetlands and other surface waters subject to impact by dredge and fill activities under a state programmatic general permit; providing that seeking to use such a permit consents to specified federal wetland jurisdiction criteria; deleting certain conditions limiting when the department may assume federal permitting programs for the discharge of dredged or fill material, etc. EP 01/27/2016 Fav/CS AGG 02/11/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
	With subcommittee recommendation – General Government		
23	**CS/SB 1426** Community Affairs / Stargel (Similar CS/H 1155)	Membership Associations; Requiring membership associations to file an annual report with the Legislature; prohibiting a membership association from using public funds for certain litigation; requiring the Auditor General to conduct certain audits annually, etc. CA 01/26/2016 Fav/CS ED 02/02/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 14 Nays 1
24	**CS/SB 1584** Transportation / Smith (Similar H 787)	Suspended Driver Licenses; Establishing a Driver License Reinstatement Days pilot program in certain counties to facilitate reinstatement of suspended driver licenses; providing duties of the clerks of court and the Department of Highway Safety and Motor Vehicles, etc. TR 01/27/2016 Fav/CS ACJ 02/11/2016 Favorable AP 02/18/2016 Favorable	Favorable Yeas 15 Nays 0
	With subcommittee recommendation – Criminal and Civil Justice		
25	**SB 7058** Education Pre-K - 12 (Similar CS/H 7053)	Child Care and Development Block Grant Program; Providing an exception from a prohibition against the use of information in the Department of Children and Families central abuse hotline for employment screening of certain child care personnel; revising the definition of the term “screening” for purposes of child care licensing requirements; requiring the Department of Children and Families and local licensing agencies to electronically post certain information relating to child care and school readiness providers; revising the prioritization of participation in school readiness programs, etc. AP 02/18/2016 Fav/CS	Fav/CS Yeas 15 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

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 Appropriations

BILL:	PCS/SB 12 (821992)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Senator Garcia and others
SUBJECT:	Mental Health and Substance Abuse
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 12 addresses Florida's system for the delivery of behavioral health services. The bill provides for mental health services for children, parents, and others seeking custody of children involved in dependency court proceedings. The bill creates a coordinated system of care to be provided either by a community or a region for those suffering from mental illness or substance use disorder through a "No Wrong Door" system of single access points.

The Agency for Health Care Administration (AHCA) and the Department of Children and Families (DCF) are directed to modify licensure requirements to create an option for a single, consolidated license to provide both mental health and substance use disorder services. Additionally, the AHCA and the DCF are directed to develop a plan to increase federal funding for behavioral health care.

To the extent possible, the bill aligns the legal processes, timelines, and processes for assessment, evaluation, and receipt of available services of the Baker Act (mental illness) and Marchman Act (substance abuse) to assist individuals in recovery and reduce readmission to the system.

The duties and responsibilities of the DCF are revised to set performance measures and standards for managing entities[1] and to enter into contracts with the managing entities that support efficient and effective administration of the behavioral health system and ensure accountability for performance. The duties and responsibilities of managing entities are revised accordingly.

The bill has an indeterminate fiscal impact.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Mental Health and Substance Abuse

Mental illness creates enormous social and economic costs.[2] Unemployment rates for persons with mental disorders are high relative to the overall population.[3] People with severe mental illness have exceptionally high rates of unemployment, between 60 percent and 100 percent.[4] Mental illness increases a person's risk of homelessness in America threefold.[5] Studies show that approximately 33 percent of our nation's homeless live with a serious mental disorder, such as schizophrenia, for which they are not receiving treatment.[6] Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment and leads to future re-offenses.[7]

According to the National Alliance on Mental Illness (NAMI), approximately 50 percent of individuals with severe mental health disorders are affected by substance abuse.[8] NAMI also estimates that 29 percent of all people diagnosed as mentally ill abuse alcohol or other drugs.[9] When mental health disorders are left untreated, substance abuse is likely to increase. When substance abuse increases, mental health symptoms often increase as well or new symptoms may be triggered. This could also be due to discontinuation of taking prescribed medications or the contraindications for substance abuse and mental health medications. When taken with other medications, mental health medications can become less effective.[10]

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[1] *See* s. 394.9082, F.S. A managing entity is a not-for-profit corporation organized in Florida which is under contract with the DCF on a regional basis to manage the day-to-day operational delivery of behavioral health services through an organized system of care and a network of providers who are contracted with the managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services related to behavioral health.
[2] Mental Illness: The Invisible Menace, *Economic Impact* http://www.mentalmenace.com/economicimpact.php
[3] Mental Illness: The Invisible Menace, *More impacts and facts* http://www.mentalmenace.com/impactsfacts.php
[4] *Id.*
[5] Family Guidance Center, *How does Mental Illness Impact Rates of Homelessness?* (February 4, 2014) *available at* http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/
[6] *Id.*
[7] *Id.*
[8] Donna M. White, LPCI, CACP, Psych Central.com, *Living with Co-Occurring Mental & Substance Abuse Disorders,* (October 2, 2013) *available at* http://psychcentral.com/blog/archives/2013/10/02/living-with-co-occurring-mental-substance-abuse-disorders/
[9] *Id.*
[10] *Id.*

Behavioral Health Managing Entities

In 2008, the Legislature required the Department of Children and Families (DCF) to implement a system of behavioral health managing entities that would serve as regional agencies to manage and pay for mental health and substance abuse services.[11] Prior to this time, the DCF, through its regional offices, contracted directly with behavioral health service providers. The Legislature found that a management structure that places the responsibility for publicly-financed behavioral health treatment and prevention services within a single private, nonprofit entity at the local level, would promote improved access to care, promote service continuity, and provide for more efficient and effective delivery of substance abuse and mental health services. There are currently seven managing entities across the state.[12]

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.[13] The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Marchman Act

In 1993, the Legislature adopted the Hal S. Marchman Alcohol and Other Drug Services Act. The Marchman Act provides a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services. Services must be provided in the least restrictive environment to promote long-term recovery. The Marchman Act includes various protections and rights of patients served.

Transportation to a Facility

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.[14]

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same

[11] *See* s. 394.9082, F.S., as created by Chapter 2008-243, Laws of Fla.
[12] Department of Children and Families website, http://www.myflfamilies.com/service-programs/substance-abuse/managing-entities, (last visited Jan. 11, 2016).
[13] Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.
[14] Section 397.6795, F.S.

manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.[15]

The Marchman Act allows law enforcement officers, however, to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to provide if necessary transfer of the detainee to an appropriate licensed service provider with an available bed.[16] However, the Baker Act prohibits the detention in jail of a mentally ill person if he or she has not been charged with a crime.[17]

Involuntary Admission to a Facility

Criteria for Involuntary Admission

The Marchman Act provides that a person meets the criteria for involuntary admission if a good-faith reason exists to believe that the person is substance-impaired and, because of the impairment:

- Has lost the power of self-control with respect to substance abuse; and either
  - Has inflicted, threatened to or attempted to inflict self-harm; or
  - Is in need of services and due to the impairment, judgment is so impaired that the person is incapable of appreciating the need for services.[18]

Protective Custody

A person who meets the criteria for involuntary admission under the Marchman Act may be taken into protective custody by a law enforcement officer.[19] The person may consent to have the law enforcement officer transport the person to his or her home, a hospital, or a licensed detoxification or addictions receiving facility.[20] If the person does not consent, the law enforcement officer may transport the person without using unreasonable force.[21]

Time Limits

A critical 72-hour period applies under both the Marchman Act and the Baker Act. Under the Marchman Act, a person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.[22]

The Baker Act provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.[23] Within that 72-hour examination period, or, if the 72

[15] Section 394.462(1)(f) and (g), F.S.
[16] Section 397.6772(1), F.S.
[17] Section 394.459(1), F.S.
[18] Section 397.675, F.S.
[19] Section 397.677, F.S.
[20] Section 397.6771, F.S.
[21] Section 397.6772(1), F.S.
[22] Section 397.6773(1) and (2), F.S.
[23] Section 394.463(2)(f), F.S.

hours ends on a weekend or holiday, no later than the next working day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume 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.[24]

Under the Marchman Act, if the court grants the petition for involuntary admission, the person may be admitted for a period of five days to a facility for involuntary assessment and stabilization.[25] If the facility needs more time, the facility may request a seven-day extension from the court.[26] Based on the involuntary assessment, the facility may retain the person pending a court decision on a petition for involuntary treatment.[27]

Under the Baker Act, the court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.[28] The petitioner must show, by clear and convincing evidence, all available less-restrictive treatment alternatives are inappropriate and that the individual:

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect that 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.[29]

III. Effect of Proposed Changes:

Section 1 amends s. 29.004, F.S., to allow courts to use state revenue to provide case management services such as service referral, monitoring, and tracking for mental health programs under s. 394, F.S.

Section 2 amends s. 39.001(6), F.S., to include mental health treatment in dependency court services and directs the state to contract with mental health service providers for such services.

Section 3 amends s. 39.507(10), F.S., to allow a dependency court to order a person requesting custody of a child to submit to a mental health or substance abuse disorder assessment or evaluation, require participation of such person in a mental health program or a treatment-based drug court program, and to oversee the progress and compliance with treatment by the person who has custody or is requesting custody of a child.

[24] Section 394.463(2)(i)4., F.S.
[25] Section 397.6811, F.S.
[26] Section 397.6821, F.S.
[27] Section 397.6822, F.S.
[28] Sections 394.4655(6) and 394.467(6), F.S.
[29] Section 394.467(1), F.S.

Section 4 amends s. 39.521(1)(b), F.S., to authorize a court, with jurisdiction of a child that has been adjudicated dependent, to require the person who has custody or is requesting custody of the child to submit to a mental illness or substance abuse disorder assessment or evaluation, to require the person to participate in and comply with the mental health program or drug court program, and to oversee the progress and compliance by the person who has custody or is requesting custody of a child.

Section 5 amends s. 394.455, F.S., to add, update, or revise definitions as appropriate.

Section 6 amends s. 394.4573, F.S., to create a coordinated system of care in the context of the No Wrong Door model which is defined as a delivery system of health care services to persons with mental health or substance abuse disorders, or both, which optimizes access to care, regardless of the entry point to the system.

The bill also defines a coordinated system of care to mean the full array of behavioral and related services in a region or community offered by all service providers, whether under contract with the managing entity or another method of community partnership or mutual agreement.

Additionally, the Department of Children and Families (DCF) is required to submit, on or before October 1 of each year, an annual assessment of the behavioral health services in the state to the Governor and the Legislature. The assessment must include comparison of the status and performance of behavioral health systems, the capacity of contracted services providers to meet estimated needs, the degree to which services are offered in the least restrictive and most appropriate therapeutic environment, and the scope of system-wide accountability activities used to monitor patient outcomes and measure continuous improvement of the behavioral health system.

The bill authorizes the DCF, subject to a specific appropriation, to award system improvement grants to managing entities based on the submission of detailed plans to enhance services, coordination of services, or a performance measurement in accordance with the No Wrong Door model. The grants must be awarded through a performance-based contract that links payments to documented and measurable system improvements.

The essential elements of a coordinated system of care under the bill must include community interventions, a designated receiving system that consists of one or more facilities serving a defined geographic area, transportation, crisis services, case management, including intensive case management, and various other services.

Section 7 amends s. 394.4597(2)(d) and (e), F.S., to specify the persons who are prohibited from being named as a patient's representative.

Section 8 amends s. 394.4598(2) through (7), F.S., to specify the persons who are prohibited from appointment as a patient's guardian advocate when a court has determined that a person is incompetent to consent to treatment but the person has not been adjudicated incapacitated. The bill also sets out the training requirements for persons appointed as guardian advocates.

Section 9 amends s. 394.462, F.S., to direct that a transportation plan must be developed and implemented in each county or, if applicable, counties that intend to share a transportation plan. The plan must specify methods of transport to a facility within the designated receiving system and may delegate responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan must ensure that persons meeting the criteria for involuntary assessment and evaluation pursuant to s. 394.463 and 397.675 will be transported. For the transportation of a voluntary or involuntary patient to a treatment facility, the plan must specify how the hospitalized patient will be transported to, from, and between facilities.

Section 10 amends s. 394.463(2), F.S., to allow a circuit or county court to enter an ex parte order stating that a person appears to meet the criteria for involuntary examination. The ex parte order must be based on written or oral sworn testimony that includes specific facts supporting the findings. Facilities accepting patients based on ex parte orders must send a copy of the order to the managing entity in its region the next working day. A facility admitting a person for involuntary examination who is not accompanied by an ex parte order must notify the DCF and the managing entity the next working day.

The bill also adds language that a person may not be held for involuntary examination for more than 72 hours without specified actions being taken.

Section 11 amends s. 394.4655, F.S., to allow a court to order a person to involuntary outpatient services, upon a finding by clear and convincing evidence, that the person meets the criteria specified. The recommendation by the administrator of a facility of a person for involuntary outpatient services must be supported by two qualified professionals, both of whom have personally examined the person within the preceding 72 hours. A court may not order services in a proposed treatment plan which are not available. The service provider must notify the managing entity as to the availability of the requested services, and the managing entity must document its efforts to obtain the requested services.

Section 12 amends s. 394.467, F.S., to add to the criteria for involuntary inpatient placement for mental illness the present threat of substantial physical or mental harm to a person's well-being. The bill prohibits a court from ordering an individual with traumatic brain injury or dementia who lacks a co-occurring mental illness to be involuntarily placed in a treatment facility.

Section 13 amends s. 394.46715, F.S., to provide the DCF rulemaking authority.

Section 14 creates s. 394.761, F.S., to direct the DCF, in coordination with the managing entities, to compile detailed documentation of the cost and reimbursements for Medicaid-covered services provided to Medicaid-eligible individuals by providers of behavioral health services that are also funded through the DCF. The DCF's documentation, along with a report of general revenue funds supporting behavioral health services that are not spent as matching funds for federal programs or otherwise required under federal regulations, must be submitted to the Agency for Health Care Administration (AHCA) by December 31, 2016. Copies of the report must also be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives. If the report presents clear evidence that Medicaid reimbursements are less than the costs of providing the services, the AHCA and the DCF will prepare and submit any budget amendments necessary to use unmatched general revenue funds in the 2016-2017 fiscal

year to draw additional federal funding to increase Medicaid funding for behavioral health service providers receiving the unmatched general revenue. Such payments must be made to providers in accordance with federal law and regulations.

Section 15 amends s. 394.875, F.S., to direct the DCF and the AHCA, by January 1, 2017, to modify licensure rules and procedures to create an option for a single, consolidated license for a provider who offers multiple types of mental health and substance abuse services regulated under chs. 394 and 397, F.S.

Section 16 amends s. 394.9082, F.S., to revise and update the duties and responsibilities of the managing entities and the DCF and to provide definitions, contracting requirements, and accountability measures.

The DCF's duties and responsibilities are revised to include the designation of facilities into the receiving system developed by one or more counties; contract with the managing entities; specify data reporting and use of shared data systems; develop strategies to divert persons with mental illness or substance abuse disorders from the criminal and juvenile justice system; support the development and implementation of a coordinated system of care to require providers receiving state funds through a direct contract with the DCF to work with the managing entity to coordinate the provision of behavioral health services; set performance measures and standards for managing entities; develop a unique identifier for clients receiving services; and coordinate procedures for referral and admission of patients to, and discharge from, state treatment facilities.

This section sets out the DCF's duties regarding its contracts with the managing entities. The contracts must support efficient and effective administration of the behavioral health system and ensure accountability for performance. The managing entities' contracts are subject to performance review beginning July 1, 2018. The review must include analysis of the managing entities' performance measures, the results of the DCF's contract monitoring, and related performance and compliance issues. Based on a satisfactory performance review, the DCF may negotiate with the managing entity for a four-year contract pursuant to s. 287.057(3)(e), F.S. If a managing entity does not meet the requirements of the performance review, the DCF must create a corrective action plan. If the corrective action plan is not satisfactorily completed by the managing entity, the DCF will terminate the contract at the end of the contract term and initiate a competitive procurement process to select a new managing entity.

The revised and updated duties and responsibilities of the managing entities under the bill include conducting an assessment of community behavioral health care needs in each managing entity's geographic area. The assessment must be updated annually and include, at a minimum, information the DCF needs for its annual report to the Governor and Legislature. Managing entities must also develop local resources by pursuing third-party payments for services, applying for grants, and other methods to ensure services are available and accessible; provide assistance to counties to develop a designated receiving system and a transportation plan; enter into cooperative agreements with local homeless councils and organizations to address the homelessness of persons suffering from a behavioral health crisis; provide or contract for case management; and collaborate with local criminal and juvenile justice systems to divert persons

with mental illness or substance abuse disorders, or both, from the criminal and juvenile justice systems.

Section 17 amends s. 397.311, F.S., to create a definition for involuntary services and revise the definition of qualified professional.

Section 18 amends s. 397.675, F.S., to revise the criteria for assessment, stabilization, and involuntary treatment for persons with a substance abuse or co-occurring mental health disorder to include that without care or treatment, the person is likely to suffer from neglect or to refuse to care for himself or herself and that neglect or refusal poses a real and present threat of substantial harm to his or her well-being and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or is likely to inflict, physical harm on himself or herself, or another.

Section 19 amends s. 397.679, F.S., to expand the types of professionals who may execute a certificate for application for emergency admission of a person to a hospital or licensed detoxification facility to include a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's level certified addictions professional if the certification is specific to substance abuse disorders.

Section 20 amends s. 397.6791, F.S., to expand the types of professionals who may initiate a certificate for emergency assessment or admission of a person who may meet the criteria for substance abuse disorder to include a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's level certified addictions professional if the certification is specific to substance abuse disorders

Section 21 amends s. 397.6793, F.S., to revise the criteria for a person to be examined or assessed to include a reasonable belief that without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself and that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being. The professional's certificate authorizing the involuntary admission of a person is valid for seven days after issuance.

Section 22 amends s. 397.6795, F.S., to allow a person's spouse or guardian, or a law enforcement officer, to deliver a person named in a professional's certificate for emergency admission to a hospital or licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization.

Section 23 amends s. 397.681, F.S., to specify that a court clerk may not charge a filing fee for the filing of a petition for involuntary assessment and stabilization.

Section 24 amends s. 397.6811(1), F.S., to allow a petition for assessment and stabilization to be filed by a person who has direct personal knowledge of a person's substance abuse disorder.

Section 25 amends s. 397.6814, F.S., to remove the requirement that a petition for involuntary assessment and stabilization contain a statement regarding the person's ability to afford an attorney. This section also directs that a fee may not be charged for the filing of a petition pursuant to this section.

Section 26 amends s. 397.6819, F.S., to allow a licensed service provider to admit a person for a period not to exceed 5 days unless a petition for involuntary outpatient services has been initiated pending further order of the court.

Section 27 amends s. 397.695, F.S., to provide for the filing of a petition for involuntary outpatient services and the professionals that must support such a recommendation. If the person has been stabilized and no longer meets the criteria for involuntary assessment and stabilization, he or she must be released while waiting for the hearing. The service provider must prepare certain reports and a treatment plan, including certification to the court that the recommended services are available. If the services are unavailable, the petition may not be filed with the court.

Section 28 amends s. 397.6951, F.S., to amend the content requirements of the petition for involuntary outpatient services to include the person's history of failure to comply with treatment requirements, a factual allegation that the person is unlikely to voluntarily participate in the recommended services, and a factual allegation that the person is in need of the involuntary outpatient services.

Section 29 amends s. 397.6955, F.S., to update the duties of the court upon the filing of a petition for involuntary outpatient services by including the requirement to schedule a hearing within five days unless a continuance is granted.

Section 30 amends s. 397.6957, F.S., to update the requirements of the court to hear and review all relevant evidence at a hearing for involuntary outpatient services, including the requirement that the petitioner has the burden of proving by clear and convincing evidence that the respondent has a history of lack of compliance with treatment for substance abuse, is unlikely to voluntarily participate in the recommended treatment, and that, without services, is likely to suffer from neglect or tor refuse to care for himself or herself. One of the qualified professionals that executed the involuntary outpatient services certificate must be a witness at the hearing.

Section 31 amends s. 397.697, F.S., to allow courts to order involuntary outpatient services when the court finds the conditions have been proven by clear and convincing evidence; however, the court cannot order involuntary outpatient services if the recommended services are not available.

Section 32 amends s. 397.6971, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary outpatient services.

Section 33 amends s. 397.6975, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary outpatient services.

Section 34 amends s. 397.6977, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary outpatient services.

Section 35 creates s. 397.6978, F.S., to allow for the appointment of a guardian advocate for a person determined incompetent to consent to treatment. The bill lists the persons prohibited from being appointed the patient's guardian advocate.

Section 36 amends s. 39.407, F.S., to correct cross-references.

Section 37 amends s. 212.055, F.S., to correct cross-references.

Section 38 amends s. 394.4599, F.S., to correct cross-references.

Section 39 amends s. 394.495(3), F.S., to correct cross-references.

Section 40 amends s. 394.496(5), F.S., to correct cross-references.

Section 41 amends s. 394.9085(6), F.S., to correct cross-references.

Section 42 amends s. 397.405(8), F.S., to correct cross-references.

Section 43 amends s. 397.407(1) and (5), F.S., to correct cross-references.

Section 44 amends s. 397.416, F.S., to correct cross-references.

Section 45 amends s. 409.972(1)(b), F.S., to correct cross-references.

Section 46 amends s. 440.102(1)(d) and (g), F.S., to correct cross-references.

Section 47 amends s. 744.704(7), F.S., to correct cross-references.

Section 48 amends s. 790.065(2)(a), F.S., to correct cross-references.

Section 49 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Since the bill requires a transportation plan to be developed and implemented in each county or, if applicable, in counties that intend to share a transportation plan, it falls within the purview of Section 18(a), Article VII, Florida Constitution, which provides that cities and counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. None of the exceptions apply. However, subsection (d) provides an exemption from this prohibition for laws determined to have an "insignificant fiscal impact." The fiscal impact of this requirement is indeterminate because the number of rides needed by residents cannot be predicted. If the costs exceed the insignificant threshold, the bill will require a 2/3 vote of the membership of each house and a finding of an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

PCS/SB 12 prohibits a filing fee being charged for Marchman Act petitions; however, this does not create a fiscal impact on the clerks of court or the state court system because no fees are currently assessed.[30]

B. Private Sector Impact:

Persons appointed by the court as guardian advocates for individuals in need of behavioral health services will have increased training requirements under the bill.

Behavioral health managing entities that have satisfactory contract performance will benefit from the provisions that allow the DCF to negotiate a new four-year contract using the exemption provided in s. 287.057(3)(e), F.S.

C. Government Sector Impact:

State

To the extent that the bill encourages the use of involuntary outpatient services rather than inpatient placement, the state would experience a positive fiscal impact. The cost of care in state treatment facilities is more expensive than community based behavioral health care. The amount of this potential cost savings is indeterminate.

Under the bill, the DCF has revised duties to review local behavioral health care plans, write or revise rules, and award any grants for implementation of the No Wrong Door policy. Similar administrative duties are currently performed by the DCF so these revised duties are not expected to create a fiscal impact.

Local

Local governments must revise their transportation plans for acute behavioral health care under the Baker Act and Marchman Act. The bill requires that as part of the transportation plan for the No Wrong Door policy, transportation must be provided between the single point of entry for behavioral health care and other treatment providers

[30] E-mail received from Florida Court Clerks & Comptroller, Nov. 6, 2015, and on file in the Senate Committee on Children, Families & Elder Affairs.

or settings as appropriate. This may create an indeterminate fiscal impact as such services are not currently provided in all areas of the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 29.004, 39.001, 39.507, 39.521, 394.455, 394.4573, 394.4597, 394.4598, 394.462, 394.463, 394.4655, 394.467, 394.46715, 394.761, 394.875, 394.9082, 397.311, 397.675, 397.679, 397.6791, 397.6793, 397.6795, 397.681, 397.6811, 397.6814, 397.6819, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, 397.6977, 397.6978, 39.407, 212.055, 394.4599, 394.495, 394.496, 394.9085, 397.405, 397.407, 397.416, 409.972, 440.102, 744.704, and 790.065.

This bill creates the following sections of the Florida Statutes: 394.761 and 397.6978.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Health and Human Services on January 26, 2016:
The CS:

- Removes the provision in the original bill authorizing a service provider to petition a county court for continued involuntary outpatient services;
- Prohibits a court from ordering an individual with traumatic brain injury or dementia who lacks a co-occurring mental illness to be involuntarily placed in a treatment facility;
- Revises the bill's provisions for the Department of Children and Families and the Agency for Health Care Administration to seek to maximize the amount of federal Medicaid funds available in the state for behavioral health services; and
- Makes technical terminology revisions throughout the bill.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
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The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (e) is added to subsection (10) of section 29.004, Florida Statutes, to read:

29.004 State courts system.—For purposes of implementing s. 14, Art. V of the State Constitution, the elements of the state courts system to be provided from state revenues appropriated by general law are as follows:

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(10) Case management. Case management includes:

(e) Service referral, coordination, monitoring, and tracking for mental health programs under chapter 394.

Case management may not include costs associated with the application of therapeutic jurisprudence principles by the courts. Case management also may not include case intake and records management conducted by the clerk of court.

Section 2. Subsection (6) of section 39.001, Florida Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(6) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.—

(a) The Legislature recognizes that early referral and comprehensive treatment can help combat mental illness and substance abuse disorders in families and that treatment is cost-effective.

(b) The Legislature establishes the following goals for the state related to mental illness and substance abuse treatment services in the dependency process:

1. To ensure the safety of children.

2. To prevent and remediate the consequences of mental illness and substance abuse disorders on families involved in protective supervision or foster care and reduce the occurrences of mental illness and substance abuse disorders, including alcohol abuse or other related disorders, for families who are at risk of being involved in protective supervision or foster care.

3. To expedite permanency for children and reunify healthy,

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intact families, when appropriate.

4. To support families in recovery.

(c) The Legislature finds that children in the care of the state's dependency system need appropriate health care services, that the impact of mental illnesses and substance abuse on health indicates the need for health care services to include treatment for mental health and substance abuse disorders for ~~services to~~ children and parents where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's dependency system must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related mental illness and substance abuse problems.

(d) It is the intent of the Legislature to encourage the use of the mental health programs established under chapter 394 and the drug court program model established under ~~by~~ s. 397.334 and authorize courts to assess children and persons who have custody or are requesting custody of children where good cause is shown to identify and address mental illnesses and substance abuse disorders ~~problems~~ as the court deems appropriate at every stage of the dependency process. Participation in treatment, including a treatment-based mental health court program or a treatment-based drug court program, may be required by the court following adjudication. Participation in assessment and treatment before ~~prior to~~ adjudication is ~~shall be~~ voluntary, except as provided in s. 39.407(16).

(e) It is therefore the purpose of the Legislature to

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provide authority for the state to contract with mental health service providers and community substance abuse treatment providers for the development and operation of specialized support and overlay services for the dependency system, which will be fully implemented and used as resources permit.

(f) Participation in a treatment-based mental health court program or a ~~the~~ treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult, but is intended to enable these agencies to better meet their needs through shared responsibility and resources.

Section 3. Paragraph (c) of 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.

(c) 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 a personal

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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 residential treatment and is reasonably likely to benefit from the treatment.

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

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

A copy of the written findings of the evaluation and suitability assessment must be provided to the department, ~~and~~ to the guardian ad litem, and, if the child is a member of a Medicaid Managed Health Care Plan, to the plan that is financially responsible for the child's care in residential treatment, any of whom must be provided ~~who shall have~~ the opportunity to discuss the findings with the evaluator.

Section 4. Subsection (10) of section 39.507, Florida Statutes, is amended to read:

39.507 Adjudicatory hearings; orders of adjudication.—

(10) After an adjudication of dependency, or a finding of dependency in which ~~where~~ adjudication is withheld, the court may order a person who has, ~~custody~~ or is requesting, custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural

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requirements provided under the Florida Rules of Juvenile Procedure. The assessment or evaluation must be administered by an appropriate ~~a~~ qualified professional, as defined in s. 394.455 or s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health program established under chapter 394 or a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including a treatment-based mental health court program or a ~~the~~ treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subsection may be made only upon good cause shown. This subsection does not authorize placement of a child with a person seeking custody, other than the parent or legal custodian, who requires mental health or substance abuse disorder treatment.

Section 5. Paragraph (b) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the

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parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(b) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental illness or substance abuse disorder assessment or evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural requirements provided under the Florida Rules of Juvenile Procedure. The assessment or evaluation must be administered by an appropriate ~~a~~ qualified professional, as defined in s, 394.455 or s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health program established under chapter 394 or a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including a treatment-based mental health court program or a ~~the~~ treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person


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who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must ~~shall~~ set forth the powers of the custodian of the child and ~~shall~~ include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, ~~no~~ further judicial reviews are

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not required if~~, so long as~~ permanency has been established for the child.

Section 6. Section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, ~~unless the context clearly requires otherwise,~~ the term:

(1) "Access center" means a facility staffed by medical, behavioral, and substance abuse professionals which provides emergency screening and evaluation for mental health or substance abuse disorders and may provide transportation to an appropriate facility if an individual is in need of more intensive services.

(2) "Addictions receiving facility" is a secure, acute care facility that, at a minimum, provides emergency screening, evaluation, detoxification and stabilization services; is operated 24 hours per day, 7 days per week; and is designated by the department to serve individuals found to have substance abuse impairment who qualify for services under this part.

(3)~~(1)~~ "Administrator" means the chief administrative officer of a receiving or treatment facility or his or her designee.

(4) "Adult" means an individual who is 18 years of age or older or who has had the disability of nonage removed under chapter 743.

(5) "Advanced registered nurse practitioner" means any person licensed in this state to practice professional nursing who is certified in advanced or specialized nursing practice under s. 464.012.

(6)~~(2)~~ "Clinical psychologist" means a psychologist as

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defined in s. 490.003(7) with 3 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 under this part.

(7) ~~(3)~~ "Clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by ~~a~~ facility staff which pertains to the patient's hospitalization or treatment.

(8) ~~(4)~~ "Clinical social worker" means a person licensed as a clinical social worker under s. 491.005 or s. 491.006 ~~chapter 491~~.

(9) ~~(5)~~ "Community facility" means a ~~any~~ community service provider that contracts ~~contracting~~ with the department to furnish substance abuse or mental health services under part IV of this chapter.

(10) ~~(6)~~ "Community mental health center or clinic" means a publicly funded, not-for-profit center that ~~which~~ contracts with the department for the provision of inpatient, outpatient, day treatment, or emergency services.

(11) ~~(7)~~ "Court," unless otherwise specified, means the circuit court.

(12) ~~(8)~~ "Department" means the Department of Children and Families.

(13) "Designated receiving facility" means a facility approved by the department which may be a public or private hospital, crisis stabilization unit, addictions receiving

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facility and provides, at a minimum, emergency screening, evaluation, and short-term stabilization for mental health or substance abuse disorders, and which may have an agreement with a corresponding facility for transportation and services.

(14) "Detoxification facility" means a facility licensed to provide detoxification services under chapter 397.

(15) "Electronic means" is a form of telecommunication which requires all parties to maintain visual as well as audio communication when being used to conduct an examination by a qualified professional.

(16) ~~(9)~~ "Express and informed consent" means consent voluntarily given in writing, by a competent person, after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(17) ~~(10)~~ "Facility" means any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have ~~a mental illness~~ or who have been diagnosed as having a mental illness or substance abuse impairment. The term ~~"Facility"~~ does not include a ~~any~~ program or an entity licensed under ~~pursuant to~~ chapter 400 or chapter 429.

(18) "Governmental facility" means a facility owned, operated, or administered by the Department of Corrections or the United States Department of Veterans Affairs.

(19) ~~(11)~~ "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's

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person if the ward is a minor or has been adjudicated incapacitated.

(20)~~(12)~~ "Guardian advocate" means a person appointed by a court to make decisions regarding mental health or substance abuse treatment on behalf of a patient who has been found incompetent to consent to treatment pursuant to this part. ~~The guardian advocate may be granted specific additional powers by written order of the court, as provided in this part.~~

(21)~~(13)~~ "Hospital" means a hospital ~~facility as defined in s. 395.002 and~~ licensed under chapter 395 and part II of chapter 408.

(22)~~(14)~~ "Incapacitated" means that a person has been adjudicated incapacitated pursuant to part V of chapter 744 and a guardian of the person has been appointed.

(23)~~(15)~~ "Incompetent to consent to treatment" means a state in which ~~that~~ a person's judgment is so affected by a ~~his or her~~ mental illness or a substance abuse impairment, that he or she ~~the person~~ lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical, ~~or~~ mental health, or substance abuse treatment.

(24) "Involuntary examination" means an examination performed under s. 394.463 or s. 397.675 to determine whether a person qualifies for involuntary services.

(25) "Involuntary services" in this part means court-ordered outpatient services or inpatient placement for mental health treatment pursuant to s. 394.4655 or s. 394.467.

(26)~~(16)~~ "Law enforcement officer" has the same meaning as provided ~~means a law enforcement officer as defined~~ in s. 943.10.

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(27) "Marriage and family therapist" means a person licensed to practice marriage and family therapy under s. 491.005 or s. 491.006.

(28) "Mental health counselor" means a person licensed to practice mental health counseling under s. 491.005 or s. 491.006.

(29) ~~(17)~~ "Mental health overlay program" means a mobile service that ~~which~~ provides an independent examination for voluntary admission ~~admissions~~ and a range of supplemental onsite services to persons with a mental illness in a residential setting such as a nursing home, an assisted living facility, or an adult family-care home~~,~~ or a nonresidential setting such as an adult day care center. Independent examinations provided ~~pursuant to this part~~ through a mental health overlay program must only be provided under contract with the department ~~for this service~~ or be attached to a public receiving facility that is also a community mental health center.

(30) ~~(18)~~ "Mental illness" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. For the purposes of this part, the term does not include a developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse ~~impairment~~.

(31) "Minor" means an individual who is 17 years of age or younger and who has not had the disability of nonage removed

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pursuant to s. 743.01 or s. 743.015.

(32) ~~(19)~~ "Mobile crisis response service" means a nonresidential crisis service ~~attached to a public receiving facility and~~ available 24 hours a day, 7 days a week, ~~through~~ which provides immediate intensive assessments and interventions, including screening for admission into a mental health receiving facility, an addictions receiving facility, or a detoxification facility, ~~take place~~ for the purpose of identifying appropriate treatment services.

(33) ~~(20)~~ "Patient" means any person, with or without a co-occurring substance abuse disorder who is held or accepted for mental health treatment.

(34) ~~(21)~~ "Physician" means a medical practitioner licensed under chapter 458 or chapter 459 ~~who has experience in the diagnosis and treatment of mental and nervous disorders~~ or a physician employed by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense ~~which qualifies as a receiving or treatment facility under this part~~.

(35) "Physician assistant" means a person licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental disorders.

(36) ~~(22)~~ "Private facility" means any hospital or facility operated by a for-profit or not-for-profit corporation or association which ~~that~~ provides mental health or substance abuse services and is not a public facility.

(37) ~~(23)~~ "Psychiatric nurse" means an advanced registered nurse practitioner certified under s. 464.012 who has a master's or doctoral degree in psychiatric nursing, holds a national


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advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician.

(38) ~~(24)~~ "Psychiatrist" means a medical practitioner licensed under chapter 458 or chapter 459 ~~who has primarily diagnosed and treated mental and nervous disorders~~ for at least ~~a period of not less than~~ 3 years, inclusive of psychiatric residency.

(39) ~~(25)~~ "Public facility" means a ~~any~~ facility that has contracted with the department to provide mental health services to all persons, regardless of ~~their~~ ability to pay, and is receiving state funds for such purpose.

(40) "Qualified professional" means a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490.003(7) or chapter 491; a psychiatrist licensed under chapter 458 or chapter 459; or a psychiatric nurse as defined in subsection (37).

(41) ~~(26)~~ "Receiving facility" means any public or private facility or hospital designated by the department to receive and hold or refer, as appropriate, involuntary patients under emergency conditions ~~or~~ for mental health or substance abuse ~~psychiatric~~ evaluation and to provide ~~short-term~~ treatment or transportation to the appropriate service provider. The term does not include a county jail.

(42) ~~(27)~~ "Representative" means a person selected to receive notice of proceedings during the time a patient is held in or admitted to a receiving or treatment facility.

(43) ~~(28)(a)~~ "Restraint" means: ~~a physical device, method, or drug used to control behavior.~~

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(a) A physical restraint, including ~~is~~ any manual method or physical or mechanical device, material, or equipment attached or adjacent to an ~~the~~ individual's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body. Physical restraint includes the physical holding of a person during a procedure to forcibly administer psychotropic medication. Physical restraint does not include physical devices such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests or for purposes of orthopedic, surgical, or other similar medical treatment, when used to provide support for the achievement of functional body position or proper balance, or when used to protect a person from falling out of bed.

(b) A drug or ~~used as a restraint is a~~ medication used to control a ~~the~~ person's behavior or to restrict his or her freedom of movement which ~~and~~ is not part of the standard treatment regimen of a person with a diagnosed mental illness ~~who is a client of the department. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint~~.

~~(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; or for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to~~


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~~protect a person from falling out of bed.~~

(44) "School psychologist" has the same meaning as in s. 490.003.

(45)~~(29)~~ "Seclusion" means the physical segregation ~~of a person in any fashion~~ or involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this part ~~chapter~~, the term does not mean isolation due to a person's medical condition or symptoms.

(46)~~(30)~~ "Secretary" means the Secretary of Children and Families.

(47) "Service provider" means a receiving facility, any facility licensed under chapter 397, a treatment facility, an entity under contract with the department to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced registered nurse practitioner, a psychiatric nurse, or a qualified professional as defined in this section.

(48) "Substance abuse impairment" means a condition involving the use of alcoholic beverages or any psychoactive or mood-altering substance in such a manner that a person has lost the power of self-control and has inflicted or is likely to inflict physical harm on himself or herself or others.

(49)~~(31)~~ "Transfer evaluation" means the process by which~~,~~ ~~as approved by the appropriate district office of the~~


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~~department, whereby~~ a person who is being considered for placement in a state treatment facility is ~~first~~ evaluated for appropriateness of admission to a state treatment ~~the~~ facility ~~by a community-based public receiving facility or by a community mental health center or clinic if the public receiving facility is not a community mental health center or clinic~~.

(50)~~(32)~~ "Treatment facility" means a ~~any~~ state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the department when rendering such services to a person pursuant to the provisions of this part. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.

(51) "Triage center" means a facility that is designated by the department and has medical, behavioral, and substance abuse professionals present or on call to provide emergency screening and evaluation of individuals transported to the center by a law enforcement officer.

~~(33) "Service provider" means any public or private receiving facility, an entity under contract with the Department of Children and Families to provide mental health services, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatric nurse as defined in subsection (23), or a community mental health center or clinic as defined in this part.~~

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~~(34) "Involuntary examination" means an examination performed under s. 394.463 to determine if an individual qualifies for involuntary inpatient treatment under s. 394.467(1) or involuntary outpatient treatment under s. 394.4655(1).~~

~~(35) "Involuntary placement" means either involuntary outpatient treatment pursuant to s. 394.4655 or involuntary inpatient treatment pursuant to s. 394.467.~~

~~(36) "Marriage and family therapist" means a person licensed as a marriage and family therapist under chapter 491.~~

~~(37) "Mental health counselor" means a person licensed as a mental health counselor under chapter 491.~~

~~(38) "Electronic means" means a form of telecommunication that requires all parties to maintain visual as well as audio communication.~~

Section 7. Section 394.4573, Florida Statutes, is amended to read:

394.4573 Coordinated system of care; annual assessment; essential elements ~~Continuity of care management system~~; measures of performance; system improvement grants; reports.—On or before October 1 of each year, the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an assessment of the behavioral health services in this state in the context of the No-Wrong-Door model and standards set forth in this section. The department's assessment shall be based on both quantitative and qualitative data and must identify any significant regional variations. The assessment must include information gathered from managing entities; service providers; facilities performing

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acute behavioral health care triage functions for the community; crisis stabilization units; detoxification units; addictions receiving facilities and hospitals, both public and private; law enforcement; judicial officials; local governments; behavioral health consumers and their family members; and the public.

(1) As used in ~~For the purposes of~~ this section:

(a) "Case management" means those direct services provided to a client in order to assess his or her ~~activities aimed at assessing client~~ needs, plan or arrange ~~planning~~ services, coordinate service providers, link ~~linking~~ the service system to a client, monitor ~~coordinating the various system components, monitoring~~ service delivery, and evaluate patient outcomes ~~evaluating the effect of service delivery~~.

(b) "Case manager" means an individual who works with clients~~,~~ and their families and significant others~~,~~ to provide case management.

(c) "Client manager" means an employee of the managing entity or entity under contract with the managing entity ~~department~~ who is assigned to specific provider agencies and geographic areas to ensure that the full range of needed services is available to clients.

(d) "Coordinated system ~~Continuity~~ of care ~~management system~~" means ~~a system that assures, within available resources, that clients have access to~~ the full array of behavioral and related services in a region or community offered by all service providers, whether participating under contract with the managing entity or another method of community partnership or mutual agreement ~~within the mental health services delivery system~~.


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(e) "No-Wrong-Door model" means a model for the delivery of acute care services to persons who have mental health or substance abuse disorders, or both, which optimizes access to care, regardless of the entry point to the behavioral health care system.

(2) The essential elements of a coordinated system of care include:

(a) Community interventions, such as prevention, primary care for behavioral health needs, therapeutic and supportive services, crisis response services, and diversion programs.

(b) A designated receiving system shall consist of one or more facilities serving a defined geographic area and responsible for assessment and evaluation, both voluntary and involuntary, and treatment or triage for patients who present with mental illness, substance abuse disorder, or co-occurring disorders. A county or several counties shall plan the designated receiving system through an inclusive process, approved by the managing entity, and documented through written memoranda of agreement or other binding arrangements. The designated receiving system may be organized in any of the following ways so long as it functions as a No-Wrong-Door model that responds to individual needs and integrates services among various providers:

1. A central receiving system, which consists of a designated central receiving facility that serves as a single entry point for persons with mental health or substance abuse disorders, or both. The central receiving facility must be capable of assessment, evaluation, and triage or treatment for various conditions and circumstances.

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2. A coordinated receiving system, which consists of multiple entry points that are linked by shared data systems, formal referral agreements, and cooperative arrangements for care coordination and case management. Each entry point must be a designated receiving facility and must provide or arrange for necessary services following an initial assessment and evaluation.

3. A tiered receiving system, which consists of multiple entry points, some of which offer only specialized or limited services. Each service provider must be classified according to its capabilities as either a designated receiving facility, or another type of service provider such as a residential detoxification center, triage center, or an access center. All participating service providers must be linked by methods to share data that are compliant with both state and federal patient privacy and confidentiality laws, formal referral agreements, and cooperative arrangements for care coordination and case management. An accurate inventory of the participating service providers which specifies the capabilities and limitations of each provider must be maintained and made available at all times to all first responders in the service area.

(c) Transportation in accordance with a plan developed under s. 394.462.

(d) Crisis services, including mobile response teams, crisis stabilization units, addiction receiving facilities, and detoxification facilities.

(e) Case management, including intensive case management for individuals determined to be high-need or high-utilization

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individuals under s. 394.9082(2(e).

(f) Outpatient services.

(g) Residential services.

(h) Hospital inpatient care.

(i) Aftercare and other post-discharge services.

(j) Medication Assisted Treatment and medication management.

(k) Recovery support, including housing assistance and support for competitive employment, educational attainment, independent living skills development, family support and education, and wellness management and self-care.

(3) The department's annual assessment must compare the status and performance of the extant behavioral health system with the following standards and any other standards or measures that the department determines to be applicable.

(a) The capacity of the contracted service providers to meet estimated need when such estimates are based on credible evidence and sound methodologies.

(b) The extent to which the behavioral health system uses evidence-informed practices and broadly disseminates the results of quality improvement activities to all service providers.

(c) The degree to which services are offered in the least restrictive and most appropriate therapeutic environment.

(d) The scope of system-wide accountability activities used to monitor patient outcomes and measure continuous improvement in the behavioral health system.

(4) Subject to a specific appropriation by the Legislature, the department may award system improvement grants to managing entities based on the submission of a detailed plan to enhance


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services, coordination, or performance measurement in accordance with the model and standards specified in this section. Such a grant must be awarded through a performance-based contract that links payments to the documented and measurable achievement of system improvements ~~The department is directed to implement a continuity of care management system for the provision of mental health care, through the provision of client and case management, including clients referred from state treatment facilities to community mental health facilities. Such system shall include a network of client managers and case managers throughout the state designed to:~~

~~(a) Reduce the possibility of a client's admission or readmission to a state treatment facility.~~

~~(b) Provide for the creation or designation of an agency in each county to provide single intake services for each person seeking mental health services. Such agency shall provide information and referral services necessary to ensure that clients receive the most appropriate and least restrictive form of care, based on the individual needs of the person seeking treatment. Such agency shall have a single telephone number, operating 24 hours per day, 7 days per week, where practicable, at a central location, where each client will have a central record.~~

~~(c) Advocate on behalf of the client to ensure that all appropriate services are afforded to the client in a timely and dignified manner.~~

~~(d) Require that any public receiving facility initiating a patient transfer to a licensed hospital for acute care mental health services not accessible through the public receiving~~


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~~facility shall notify the hospital of such transfer and send all records relating to the emergency psychiatric or medical condition.~~

~~(3) The department is directed to develop and include in contracts with service providers measures of performance with regard to goals and objectives as specified in the state plan. Such measures shall use, to the extent practical, existing data collection methods and reports and shall not require, as a result of this subsection, additional reports on the part of service providers. The department shall plan monitoring visits of community mental health facilities with other state, federal, and local governmental and private agencies charged with monitoring such facilities.~~

Section 8. Paragraphs (d) and (e) of subsection (2) of section 394.4597, Florida Statutes, are amended to read:

394.4597 Persons to be notified; patient’s representative.—

(2) INVOLUNTARY PATIENTS.—

(d) When the receiving or treatment facility selects a representative, first preference shall be given to a health care surrogate, if one has been previously selected by the patient. If the patient has not previously selected a health care surrogate, the selection, except for good cause documented in the patient’s clinical record, shall be made from the following list in the order of listing:

1. The patient’s spouse.

2. An adult child of the patient.

3. A parent of the patient.

4. The adult next of kin of the patient.

5. An adult friend of the patient.

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~~6. The appropriate Florida local advocacy council as provided in s. 402.166.~~

(e) The following persons are prohibited from selection as a patient's representative:

1. A professional providing clinical services to the patient under this part.

2. The licensed professional who initiated the involuntary examination of the patient, if the examination was initiated by professional certificate.

3. An employee, an administrator, or a board member of the facility providing the examination of the patient.

4. An employee, an administrator, or a board member of a treatment facility providing treatment for the patient.

5. A person providing any substantial professional services to the patient, including clinical services.

6. A creditor of the patient.

7. A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of injunction is temporary or final, and for which the patient was the petitioner.

8. A person subject to an injunction for protection against repeat violence, stalking, sexual violence, or dating violence under s. 784.046, whether the order of injunction is temporary or final, and for which the patient was the petitioner ~~A licensed professional providing services to the patient under this part, an employee of a facility providing direct services to the patient under this part, a department employee, a person providing other substantial services to the patient in a professional or business capacity, or a creditor of the patient~~

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~~shall not be appointed as the patient's representative~~.

Section 9. Present subsections (2) through (7) of section 394.4598, Florida Statutes, are redesignated as subsections (3) through (8), respectively, a new subsection (2) is added to that section, and present subsections (3) and (4) of that section are amended, to read:

394.4598 Guardian advocate.—

(2) The following persons are prohibited from appointment as a patient's guardian advocate:

(a) A professional providing clinical services to the patient under this part.

(b) The licensed professional who initiated the involuntary examination of the patient, if the examination was initiated by professional certificate.

(c) An employee, an administrator, or a board member of the facility providing the examination of the patient.

(d) An employee, an administrator, or a board member of a treatment facility providing treatment of the patient.

(e) A person providing any substantial professional services, excluding public and professional guardians, to the patient, including clinical services.

(f) A creditor of the patient.

(g) A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of injunction is temporary or final, and for which the patient was the petitioner.

(h) A person subject to an injunction for protection against repeat violence, stalking, sexual violence, or dating violence under s. 784.046, whether the order of injunction is


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765 temporary or final, and for which the patient was the
766 petitioner.
767 (4) ~~(3)~~ In lieu of the training required of guardians
768 appointed pursuant to chapter 744, ~~Prior to~~ a guardian advocate
769 must, at a minimum, participate in a 4-hour training course
770 approved by the court before exercising his or her authority~~,~~
771 ~~the guardian advocate shall attend a training course approved by~~
772 ~~the court~~. At a minimum, this training course~~, of not less than~~
773 ~~4 hours,~~ must include~~, at minimum,~~ information about ~~the~~ patient
774 rights, psychotropic medications, the diagnosis of mental
775 illness, the ethics of medical decisionmaking, and duties of
776 guardian advocates. ~~This training course shall take the place of~~
777 ~~the training required for guardians appointed pursuant to~~
778 ~~chapter 744.~~
779 (5) ~~(4)~~ The required training course and the information to
780 be supplied to prospective guardian advocates before ~~prior to~~
781 their appointment ~~and the training course for guardian advocates~~
782 must be developed ~~and completed through a course developed~~ by
783 the department, ~~and~~ approved by the chief judge of the circuit
784 court, and taught by a court-approved organization, which~~.~~
785 ~~Court-approved organizations~~ may include, but is ~~are~~ not limited
786 to, a community college ~~community or junior colleges~~, a
787 guardianship organization ~~guardianship organizations~~, a ~~and the~~
788 local bar association, or The Florida Bar. The training course
789 may be web-based, provided in video format, or other electronic
790 means but must be capable of ensuring the identity and
791 participation of the prospective guardian advocate. The court
792 may~~, in its discretion,~~ waive some or all of the training
793 requirements for guardian advocates or impose additional

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requirements. The court shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian advocate, the duties assigned to the guardian advocate, and the needs of the patient.

Section 10. Section 394.462, Florida Statutes, is amended to read:

394.462 Transportation.—A transportation plan must be developed and implemented by each county in accordance with this section. A county may enter into a memorandum of understanding with the governing boards of nearby counties to establish a shared transportation plan. When multiple counties enter into a memorandum of understanding for this purpose, the managing entity must be notified and provided a copy of the agreement. The transportation plan must describe methods of transport to a facility within the designated receiving system and may identify responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan must describe how individuals who meet the criteria for involuntary assessment and evaluation pursuant to ss. 394.463 and 397.675 will be transported. The plan may rely on emergency medical transport services or private transport companies as appropriate.

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to an appropriate facility within the designated receiving system ~~the~~

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~~nearest receiving facility~~ for examination.

(b)1. The designated law enforcement agency may decline to transport the person to a receiving facility only if:

a.~~1.~~ The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and

b.~~2.~~ The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.

2.~~3.~~ The entity providing transportation ~~jurisdiction designated by the county~~ may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From a private or public third-party payor ~~an insurance company, health care corporation, or other source~~, if the person receiving the transportation has applicable coverage ~~is covered by an insurance policy or subscribes to a health care corporation or other source for payment of such expenses~~.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(c)~~(b)~~ A ~~Any~~ company that transports a patient pursuant to this subsection is considered an independent contractor and is

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solely liable for the safe and dignified transport ~~transportation~~ of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport ~~transportation~~ of patients.

(d) ~~(c)~~ Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of ~~the~~ patients.

(e) ~~(d)~~ When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(f) ~~(e)~~ When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 or s. 397.675 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(g) ~~(f)~~ When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under this part, the law enforcement officer shall transport the person to an appropriate ~~the nearest receiving~~ facility within the designated receiving system for examination.

(h) ~~(g)~~ When any law enforcement officer has arrested a person for a felony and it appears that the person meets the


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statutory guidelines for involuntary examination or placement under this part, such person must ~~shall~~ first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the appropriate ~~nearest public receiving~~ facility within the designated receiving system, which shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide ~~mental health~~ examination and treatment to the person where he or she is held.

(i) ~~(h)~~ If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(j) ~~(i)~~ The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

(k) ~~(j)~~ The ~~nearest receiving~~ facility within the designated receiving system must accept, pursuant to this part, persons brought by law enforcement officers, an emergency medical transport service, or a private transport company for involuntary examination.

(l) ~~(k)~~ Each law enforcement agency designated pursuant to paragraph (a) shall establish a policy that ~~develop a memorandum~~

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~~of understanding with each receiving facility within the law enforcement agency's jurisdiction which~~ reflects a single set of protocols approved by the managing entity for the safe and secure transportation ~~of the person~~ and transfer of custody of the person. ~~These protocols must also address crisis intervention measures.~~

(m) ~~(l)~~ When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to ~~receiving~~ facilities within the designated receiving system, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(n) ~~(m)~~ ~~Nothing in~~ This section may not ~~shall~~ be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with ~~the provisions of~~ s. 401.445.

(2) TRANSPORTATION TO A TREATMENT FACILITY.—

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting a voluntary or involuntary patient to a treatment facility, the transportation plan established by the governing board of the county or counties must specify how ~~in which~~ the hospitalized patient will be transported to, from, and between facilities in a ~~is hospitalized shall arrange for such required transportation and shall ensure the~~ safe and dignified manner ~~transportation of the patient~~. ~~The governing board of each~~

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~~county is authorized to contract with private transport companies for the transportation of such patients to and from a treatment facility.~~

(b) A ~~Any~~ company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport ~~transportation~~ of patients.

(c) A ~~Any~~ company that contracts with one or more counties ~~the governing board of a county~~ to transport patients in accordance with this section shall comply with the applicable rules of the department to ensure the safety and dignity of ~~the~~ patients.

(d) County or municipal law enforcement and correctional personnel and equipment may ~~shall~~ not be used to transport patients adjudicated incapacitated or found by the court to meet the criteria for involuntary placement pursuant to s. 394.467, except in small rural counties where there are no cost-efficient alternatives.

(3) TRANSFER OF CUSTODY.—Custody of a person who is transported pursuant to this part, along with related documentation, shall be relinquished to a responsible individual at the appropriate receiving or treatment facility.

~~(4) EXCEPTIONS.—An exception to the requirements of this section may be granted by the secretary of the department for the purposes of improving service coordination or better meeting the special needs of individuals. A proposal for an exception must be submitted by the district administrator after being~~

~~approved by the governing boards of any affected counties, prior to submission to the secretary.~~

~~(a) A proposal for an exception must identify the specific provision from which an exception is requested; describe how the proposal will be implemented by participating law enforcement agencies and transportation authorities; and provide a plan for the coordination of services such as case management.~~

~~(b) The exception may be granted only for:~~

~~1. An arrangement centralizing and improving the provision of services within a district, which may include an exception to the requirement for transportation to the nearest receiving facility;~~

~~2. An arrangement by which a facility may provide, in addition to required psychiatric services, an environment and services which are uniquely tailored to the needs of an identified group of persons with special needs, such as persons with hearing impairments or visual impairments, or elderly persons with physical frailties; or~~

~~3. A specialized transportation system that provides an efficient and humane method of transporting patients to receiving facilities, among receiving facilities, and to treatment facilities.~~

~~(c) Any exception approved pursuant to this subsection shall be reviewed and approved every 5 years by the secretary.~~

Section 11. Subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one

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of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying~~, giving~~ the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings~~, written or oral~~. If other, less restrictive, means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate ~~the nearest receiving~~ facility within the designated receiving system for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A ~~No~~ fee may not ~~shall~~ be charged for the filing of an order under this subsection. Any ~~receiving~~ facility accepting the patient based on this order must send a copy of the order to the managing entity in the region ~~Agency for Health Care Administration on~~ the next working day. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the appropriate facility ~~executed~~ or, ~~if not executed,~~ for the period specified in the order itself, whichever comes first. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to

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the appropriate ~~nearest receiving~~ facility within the designated receiving system for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must ~~and the report shall~~ be made a part of the patient's clinical record. Any ~~receiving~~ facility accepting the patient based on this report must send a copy of the report to the department and the managing entity ~~Agency for Health Care Administration on~~ the next working day.

3. 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 has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other, less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, ~~such as voluntary appearance for outpatient evaluation,~~ a law enforcement officer shall take into custody the person named in the certificate ~~into custody~~ and deliver him or her to the appropriate ~~nearest receiving~~ facility within the designated receiving system for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any ~~receiving~~ facility accepting the patient based on this certificate must send a copy of the certificate to the managing entity ~~Agency for Health Care Administration on~~ the next working day. The document may be submitted electronically through existing data systems, if applicable.

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(b) A person may ~~shall~~ not be removed from any program or residential placement licensed under chapter 400 or chapter 429 and transported to a receiving facility for involuntary examination unless an ex parte order, a professional certificate, or a law enforcement officer's report is first prepared. If the condition of the person is such that preparation of a law enforcement officer's report is not practicable before removal, the report shall be completed as soon as possible after removal, but in any case before the person is transported to a receiving facility. A ~~receiving~~ facility admitting a person for involuntary examination who is not accompanied by the required ex parte order, professional certificate, or law enforcement officer's report shall notify the managing entity ~~Agency for Health Care Administration~~ of such admission by certified mail or by e-mail, if available, by ~~no later than~~ the next working day. The provisions of this paragraph do not apply when transportation is provided by the patient's family or guardian.

(c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may serve and execute such order on any day of the week, at any time of the day or night.

(d) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order.

(e) The managing entity and the department ~~Agency for~~

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~~Health Care Administration~~ shall receive and maintain the copies of ex parte petitions and orders, involuntary outpatient services ~~placement~~ orders issued pursuant to s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467, professional certificates, and law enforcement officers' reports. These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. These documents shall be used to ~~The agency shall~~ prepare annual reports analyzing the data obtained from these documents, without information identifying patients, and shall provide copies of reports to the department, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(f) A patient shall be examined by a physician or~~,~~ a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a ~~receiving~~ facility without unnecessary delay to determine if the criteria for involuntary services are met. Emergency treatment may be provided ~~and may,~~ upon the order of a physician, if the physician determines ~~be given emergency treatment if it is determined~~ that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist or a clinical psychologist or, ~~if the receiving facility is owned or operated by a hospital or health system, the release may also be approved by~~ a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis


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and treatment of mental illness ~~and nervous disorders and~~ after completion of an involuntary examination pursuant to this subsection. A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist. ~~However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.~~

(g) A person may not be held for involuntary examination for more than 72 hours from the time of his or her arrival at the facility unless one of the following actions is taken at the end of the 72-hour examination period or the next business day, if the examination period ends on a weekend or holiday:

1. The person must be released with the approval of a physician, psychiatrist, psychiatric nurse, or clinical psychologist. However, if the examination is conducted in a hospital, an attending emergency department physician with experience in the diagnosis and treatment of mental illness may approve the release.

2. The person must be asked to give express and informed consent for voluntary admission if a physician, psychiatrist, psychiatric nurse, or clinical psychologist has determined that the individual is competent to consent to treatment.

3. A petition for involuntary services must be completed and filed in the circuit court by the facility administrator. If electronic filing of the petition is not available in the county and the 72-hour period ends on a weekend or legal holiday, the petition must be filed by the next working day. If involuntary services are deemed necessary, the least restrictive treatment consistent with the optimum improvement of the person's

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condition must be made available.

(h) An individual discharged from a facility who is currently charged with a crime shall be released to the custody of a law enforcement officer, unless the individual has been released from law enforcement custody by posting of a bond, by a pretrial conditional release, or by other judicial release.

(i) ~~(g)~~ A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must be examined by an appropriate ~~a receiving~~ facility within 72 hours. The 72-hour period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient services ~~placement~~ pursuant to s. 394.4655(1) or involuntary inpatient placement pursuant to s. 394.467(1), the patient may be offered voluntary services or placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary inpatient placement or involuntary outpatient services ~~placement~~ must be entered into the patient's clinical record. ~~Nothing in~~ This paragraph is not intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital before ~~prior to~~ stabilization if~~, provided~~ the requirements of s. 395.1041(3)(c) have been met.

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(j) ~~(h)~~ One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist:

1. The patient must be examined by an appropriate ~~a designated receiving~~ facility and released; or

2. The patient must be transferred to a designated ~~receiving~~ facility in which appropriate medical treatment is available. However, the ~~receiving~~ facility must be notified of the transfer within 2 hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist.

~~(i) Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:~~

~~1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;~~

~~2. The patient shall be released, subject to the provisions of subparagraph 1., for voluntary outpatient treatment;~~

~~3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient shall be admitted as a voluntary patient; or~~

~~4. A petition for involuntary placement shall be filed in the circuit court when outpatient or inpatient treatment is deemed necessary. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum~~

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~~improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(3)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.~~

Section 12. Section 394.4655, Florida Statutes, is amended to read:

394.4655 Involuntary outpatient services ~~placement~~.—

(1) CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—A person may be ordered to involuntary outpatient services ~~placement~~ upon a finding of the court, by clear and convincing evidence, that the person meets all of the following criteria ~~by clear and convincing evidence~~:

(a) The person is 18 years of age or older.~~;~~

(b) The person has a mental illness.~~;~~

(c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.~~;~~

(d) The person has a history of lack of compliance with treatment for mental illness.~~;~~

(e) The person has:

1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or

2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to

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himself or herself or others, within the preceding 36 months.~~;~~

(f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and ~~either he or she~~ has refused voluntary services ~~placement~~ for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary ~~purpose of placement for treatment~~ or ~~he or she~~ is unable to determine for himself or herself whether services are ~~placement is~~ necessary.~~;~~

(g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services ~~placement~~ in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1).~~;~~

(h) It is likely that the person will benefit from involuntary outpatient services. ~~placement; and~~

(i) All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

(2) INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a)1. A patient who is being recommended for involuntary outpatient services ~~placement~~ by the administrator of the ~~receiving~~ facility where the patient has been examined may be retained by the facility after adherence to the notice procedures provided in s. 394.4599. The recommendation must be supported by the opinion of two qualified professionals ~~a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist~~, both of whom have personally examined


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the patient within the preceding 72 hours, that the criteria for involuntary outpatient services ~~placement~~ are met. ~~However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means.~~ Such recommendation must be entered on an involuntary outpatient services ~~placement~~ certificate that authorizes the ~~receiving~~ facility to retain the patient pending completion of a hearing. The certificate must ~~shall~~ be made a part of the patient's clinical record.

2. If the patient has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the ~~receiving~~ facility while awaiting the hearing for involuntary outpatient services ~~placement~~. Before filing a petition for involuntary outpatient services ~~treatment~~, the administrator of the ~~a~~ ~~receiving~~ facility or a designated department representative must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient services ~~placement~~, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment


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relationship.

3. The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient services ~~placement~~ order. The service provider shall also provide a copy of the treatment plan that addresses the nature and extent of the mental illness and any co-occurring substance abuse disorders that necessitate involuntary outpatient services. The treatment plan must specify the likely level of care, including the use of medication, and anticipated discharge criteria for terminating involuntary outpatient services. ~~The service provider shall also provide a copy of the proposed treatment plan to the patient and the administrator of the receiving facility. The treatment plan must specify the nature and extent of the patient's mental illness, address the reduction of symptoms that necessitate involuntary outpatient placement, and include measurable goals and objectives for the services and treatment that are provided to treat the person's mental illness and assist the person in living and functioning in the community or to prevent a relapse or deterioration~~. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the ~~treatment~~ plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed ~~treatment~~ plan whether sufficient services for improvement and


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stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(b) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient services ~~placement~~, the administrator of the ~~treatment~~ facility may, before the expiration of the period during which the ~~treatment~~ facility is authorized to retain the patient, recommend involuntary outpatient services ~~placement~~. The recommendation must be supported by the opinion of two qualified professionals ~~a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist~~, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services ~~placement~~ are met. ~~However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means.~~ Such recommendation must be entered on an involuntary outpatient services ~~placement~~ certificate, and the certificate


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must be made a part of the patient's clinical record.

(c)1. The administrator of the treatment facility shall provide a copy of the involuntary outpatient services ~~placement~~ certificate and a copy of the state mental health discharge form to the managing entity ~~a department representative~~ in the county where the patient will be residing. For persons who are leaving a state mental health treatment facility, the petition for involuntary outpatient services ~~placement~~ must be filed in the county where the patient will be residing.

2. The service provider that will have primary responsibility for service provision shall be identified by the designated department representative before ~~prior to~~ the order for involuntary outpatient services ~~placement~~ and must, before ~~prior to~~ filing a petition for involuntary outpatient services ~~placement~~, certify to the court whether the services recommended in the patient's discharge plan are available ~~in the local community~~ and whether the service provider agrees to provide those services. The service provider must develop with the patient, or the patient's guardian advocate, if appointed, a treatment or service plan that addresses the needs identified in the discharge plan. The plan must be deemed to be clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker, as defined in this chapter, who consults with, or is employed or contracted by, the service provider.

3. If the service provider certifies that the services in the proposed treatment or service plan are not available, the petitioner may not file the petition. The service provider must

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notify the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(3) PETITION FOR INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a) A petition for involuntary outpatient services ~~placement~~ may be filed by:

1. The administrator of a receiving facility; or

2. The administrator of a treatment facility.

(b) Each required criterion for involuntary outpatient services ~~placement~~ must be alleged and substantiated in the petition for involuntary outpatient services ~~placement~~. A copy of the certificate recommending involuntary outpatient services ~~placement~~ completed by two ~~a~~ qualified professionals ~~professional specified in subsection (2)~~ must be attached to the petition. A copy of the proposed treatment plan must be attached to the petition. Before the petition is filed, the service provider shall certify that the services in the proposed ~~treatment~~ plan are available. If the necessary services are not available ~~in the patient's local community to respond to the person's individual needs~~, the petition may not be filed. The service provider must notify the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(c) The petition for involuntary outpatient services ~~placement~~ must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside. When the petition has

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been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to the department, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel. A fee may not be charged for filing a petition under this subsection.

(4) APPOINTMENT OF COUNSEL.—

(a) Within 1 court working day after the filing of a petition for involuntary outpatient services ~~placement~~, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of the appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary outpatient services ~~placement~~. An attorney who represents the patient must be provided ~~shall have~~ access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(b) The state attorney for the circuit in which the patient is located shall represent the state as the real party in interest in the proceeding and must be provided access to the patient's clinical records and witnesses. The state attorney is authorized to independently evaluate the sufficiency and appropriateness of the petition for involuntary outpatient services.

(5) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one

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continuance of the hearing. The continuance shall be for a period of up to 4 weeks.

(6) HEARING ON INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a)1. The court shall hold the hearing on involuntary outpatient services ~~placement~~ within 5 working days after the filing of the petition, unless a continuance is granted. The hearing must ~~shall~~ be held in the county where the petition is filed, must ~~shall~~ be as convenient to the patient as is consistent with orderly procedure, and must ~~shall~~ be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding.

2. The court may appoint a magistrate ~~master~~ to preside at the hearing. One of the professionals who executed the involuntary outpatient services ~~placement~~ certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided by law ~~provide for one~~. The independent expert's report is ~~shall be~~ confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The court shall allow testimony from individuals, including family members, deemed by the court to be

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relevant under state law, regarding the person's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(b)1. If the court concludes that the patient meets the criteria for involuntary outpatient services ~~placement~~ pursuant to subsection (1), the court shall issue an order for involuntary outpatient services ~~placement~~. The court order shall be for a period of up to 90 days ~~6 months~~. The order must specify the nature and extent of the patient's mental illness. The order of the court and the treatment plan must ~~shall~~ be made part of the patient's clinical record. The service provider shall discharge a patient from involuntary outpatient services ~~placement~~ when the order expires or any time the patient no longer meets the criteria for involuntary services ~~placement~~. Upon discharge, the service provider shall send a certificate of discharge to the court.

2. The court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service. The service provider must notify the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the managing entity ~~Agency for Health Care Administration~~ by the service provider within 1 working day after it is received from the court. The order may be submitted

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electronically through existing data systems. After the ~~placement~~ order for involuntary services is issued, the service provider and the patient may modify ~~provisions of~~ the treatment plan. For any material modification of the treatment plan to which the patient or, if one is appointed, the patient's guardian advocate agrees~~, if appointed, does agree~~, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable ~~appointed~~, must be approved or disapproved by the court consistent with subsection (2).

3. If, in the clinical judgment of a physician, the patient has failed or ~~has~~ refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a person may be brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement pursuant to s. 394.467, the patient must be discharged from the ~~receiving~~ facility. The involuntary outpatient services ~~placement~~ order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services ~~placement~~ or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if applicable ~~appointed~~, agrees ~~does agree~~, the

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service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable ~~appointed~~, must be approved or disapproved by the court consistent with subsection (2).

(c) If, at any time before the conclusion of the initial hearing on involuntary outpatient services ~~placement~~, it appears to the court that the person does not meet the criteria for involuntary outpatient services ~~placement~~ under this section but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination under s. 394.463. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings are ~~shall be~~ governed by chapter 397.

(d) At the hearing on involuntary outpatient services ~~placement~~, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598. The guardian advocate shall be appointed or discharged in accordance with s. 394.4598.

(e) The administrator of the receiving facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient

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services ~~placement~~. Such documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a ~~clinical~~ psychologist or a clinical social worker.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a)1. If the person continues to meet the criteria for involuntary outpatient services ~~placement~~, the service provider shall, at least 10 days before the expiration of the period during which the treatment is ordered for the person, file in the circuit court a petition for continued involuntary outpatient services ~~placement~~. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.

2. The existing involuntary outpatient services ~~placement~~ order remains in effect until disposition on the petition for continued involuntary outpatient services ~~placement~~.

3. A certificate shall be attached to the petition which includes a statement from the person’s physician or clinical psychologist justifying the request, a brief description of the patient’s treatment during the time he or she was receiving involuntarily services ~~placed~~, and an individualized plan of continued treatment.

4. The service provider shall develop the individualized plan of continued treatment in consultation with the patient or the patient’s guardian advocate, if applicable ~~appointed~~. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued treatment to the department, the patient, the


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patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.

(b) Within 1 court working day after the filing of a petition for continued involuntary outpatient services ~~placement~~, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the person until the petition is dismissed or the court order expires or the patient is discharged from involuntary outpatient services ~~placement~~. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(c) Hearings on petitions for continued involuntary outpatient services must ~~placement shall~~ be before the circuit court. The court may appoint a magistrate ~~master~~ to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph must meet the requirements of ~~shall be in accordance with~~ subsection (6), except that the time period included in paragraph (1)(e) does not apply when ~~is not applicable in~~ determining the appropriateness of additional periods of involuntary outpatient services ~~placement~~.

(d) Notice of the hearing must ~~shall~~ be provided as set forth in s. 394.4599. The patient and the patient's attorney may agree to a period of continued outpatient services ~~placement~~ without a court hearing.

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(e) The same procedure must ~~shall~~ be repeated before the expiration of each additional period the patient is placed in treatment.

(f) If the patient has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. Section 394.4598 governs the discharge of the guardian advocate if the patient's competency to consent to treatment has been restored.

Section 13. Section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary inpatient placement.—

(1) CRITERIA.—A person may be ordered for ~~placed in~~ involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

(a) He or she has a mental illness ~~is mentally ill~~ and because of his or her mental illness:

1.a. He or she has refused voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of inpatient placement for treatment; or

b. He or she is unable to determine for himself or herself whether inpatient placement is necessary; and

2.a. He or she is ~~manifestly~~ incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or

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b. There is substantial likelihood that in the near future he or she will inflict serious bodily harm on self or others ~~himself or herself or another person~~, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive treatment alternatives that ~~which~~ would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

(2) ADMISSION TO A TREATMENT FACILITY.—A patient may be retained by a ~~receiving~~ facility or involuntarily placed in a treatment facility upon the recommendation of the administrator of the ~~receiving~~ facility where the patient has been examined and after adherence to the notice and hearing procedures provided in s. 394.4599. The recommendation must be supported by the opinion two qualified professionals ~~of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist,~~ both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary inpatient placement are met. ~~However, in a county that has a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subsection may be conducted through a face-to-face examination, in person or by electronic means.~~ Such recommendation shall be entered on a petition for ~~an~~ involuntary inpatient placement certificate that authorizes the ~~receiving~~ facility to retain the patient pending transfer to a treatment

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facility or completion of a hearing.

(3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—

(a) The administrator of the facility shall file a petition for involuntary inpatient placement in the court in the county where the patient is located. Upon filing, the clerk of the court shall provide copies to the department, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located. A ~~No~~ fee may not ~~shall~~ be charged for the filing of a petition under this subsection.

(b) A facility filing a petition under this subsection for involuntary inpatient placement shall send a copy of the petition to the managing entity in its area.

(4) APPOINTMENT OF COUNSEL.—

(a) Within 1 court working day after the filing of a petition for involuntary inpatient placement, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(b) The state attorney for the circuit in which the patient is located shall represent the state as the real party in interest in the proceeding and must be provided access to the patient's clinical records and witnesses. The state attorney is authorized to independently evaluate the sufficiency and

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appropriateness of the petition for involuntary inpatient placement.

(5) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing~~. The continuance shall be~~ for ~~a period of~~ up to 4 weeks.

(6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

(a)1. The court shall hold the hearing on involuntary inpatient placement within 5 court working days, unless a continuance is granted.

2. Except for good cause documented in the court file, the hearing must ~~shall~~ be held in the county or the facility, as appropriate, where the patient is located, must ~~and shall~~ be as convenient to the patient as is ~~may be~~ consistent with orderly procedure, and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient, and the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.

3.~~2.~~ The court may appoint a ~~general or special~~ magistrate to preside at the hearing. One of the two professionals who executed the petition for involuntary inpatient placement certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the

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right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided for by law ~~provide for one~~. The independent expert's report is ~~shall be~~ confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(b) If the court concludes that the patient meets the criteria for involuntary inpatient placement, it may ~~shall~~ order that the patient be transferred to a treatment facility or, if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate ~~receiving or treatment~~ facility, or that the patient receive services from such a ~~receiving or treatment~~ facility or service provider, on an involuntary basis, for a period of up to 90 days ~~6 months~~. However, any order for involuntary mental health services in a treatment facility may be for up to 6 months. The order shall specify the nature and extent of the patient's mental illness. The facility shall discharge a patient any time the patient no longer meets the criteria for involuntary inpatient placement, unless the patient has transferred to voluntary status.

(c) If at any time before ~~prior to~~ the conclusion of the hearing on involuntary inpatient placement it appears to the court that the person does not meet the criteria for involuntary inpatient placement under this section, but instead meets the criteria for involuntary outpatient services ~~placement~~, the court may order the person evaluated for involuntary outpatient services ~~placement~~ pursuant to s. 394.4655. The petition and


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hearing procedures set forth in s. 394.4655 shall apply. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, then the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings are ~~shall be~~ governed by chapter 397.

(d) At the hearing on involuntary inpatient placement, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598.

(e) The administrator of the petitioning ~~receiving~~ facility shall provide a copy of the court order and adequate documentation of a patient's mental illness to the administrator of a treatment facility if the ~~whenever a~~ patient is ordered for involuntary inpatient placement, whether by civil or criminal court. The documentation must ~~shall~~ include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a psychiatric nurse, clinical psychologist, a marriage and family therapist, a mental health counselor, or a clinical social worker. The administrator of a treatment facility may refuse admission to any patient directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied ~~at the same time~~ by adequate orders and documentation.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT PLACEMENT.—

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(a) Hearings on petitions for continued involuntary inpatient placement of an individual placed at any treatment facility are ~~shall be~~ administrative hearings and must ~~shall~~ be conducted in accordance with ~~the provisions of~~ s. 120.57(1), except that any order entered by the administrative law judge is ~~shall be~~ final and subject to judicial review in accordance with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity are ~~shall be~~ governed by ~~the provisions of~~ s. 916.15.

(b) If the patient continues to meet the criteria for involuntary inpatient placement and is being treated at a treatment facility, the administrator shall, before ~~prior to~~ the expiration of the period ~~during which~~ the treatment facility is authorized to retain the patient, file a petition requesting authorization for continued involuntary inpatient placement. The request must ~~shall~~ be accompanied by a statement from the patient's physician, psychiatrist, psychiatric nurse, or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was involuntarily placed, and an individualized plan of continued treatment. Notice of the hearing must ~~shall~~ be provided as provided ~~set forth~~ in s. 394.4599. If a patient's attendance at the hearing is voluntarily waived, the administrative law judge must determine that the waiver is knowing and voluntary before waiving the presence of the patient from all or a portion of the hearing. Alternatively, if at the hearing the administrative law judge finds that attendance at the hearing is not consistent with the best interests of the patient, the administrative law judge may waive the presence of

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the patient from all or any portion of the hearing, unless the patient, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath, and the proceedings must be recorded.

(c) Unless the patient is otherwise represented or is ineligible, he or she shall be represented at the hearing on the petition for continued involuntary inpatient placement by the public defender of the circuit in which the facility is located.

(d) If at a hearing it is shown that the patient continues to meet the criteria for involuntary inpatient placement, the administrative law judge shall sign the order for continued involuntary inpatient placement for a period of up to 90 days ~~not to exceed 6 months~~. However, any order for involuntary mental health services in a treatment facility may be for up to 6 months. The same procedure shall be repeated prior to the expiration of each additional period the patient is retained.

(e) If continued involuntary inpatient placement is necessary for a patient admitted while serving a criminal sentence, but his or her ~~whose~~ sentence is about to expire, or for a minor ~~patient~~ involuntarily placed, ~~while a minor~~ but who is about to reach the age of 18, the administrator shall petition the administrative law judge for an order authorizing continued involuntary inpatient placement.

(f) If the patient has been previously found incompetent to consent to treatment, the administrative law judge shall consider testimony and evidence regarding the patient's competence. If the administrative law judge finds evidence that the patient is now competent to consent to treatment, the administrative law judge may issue a recommended order to the


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court that found the patient incompetent to consent to treatment that the patient's competence be restored and that any guardian advocate previously appointed be discharged.

(g) If the patient has been ordered to undergo involuntary inpatient placement and has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's incompetence. If the patient's competency to consent to treatment is restored, the discharge of the guardian advocate shall be governed by the provisions of s. 394.4598.

The procedure required in this subsection must be followed before the expiration of each additional period the patient is involuntarily receiving services.

(8) RETURN TO FACILITY ~~OF PATIENTS~~.—If a patient involuntarily held ~~When a patient~~ at a treatment facility under this part leaves the facility without the administrator's authorization, the administrator may authorize a search for the patient and his or her ~~the~~ return ~~of the patient~~ to the facility. The administrator may request the assistance of a law enforcement agency in this regard ~~the search for and return of the patient~~.

Section 14. Section 394.46715, Florida Statutes, is amended to read:

394.46715 Rulemaking authority.—The department may adopt rules to administer this part ~~Department of Children and Families shall have rulemaking authority to implement the provisions of ss. 394.455, 394.4598, 394.4615, 394.463, 394.4655, and 394.467 as amended or created by this act. These~~


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~~rules shall be for the purpose of protecting the health, safety, and well-being of persons examined, treated, or placed under this act~~.

Section 15. Section 394.656, Florida Statutes, is amended to read:

394.656 Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program.—

(1) There is created within the Department of Children and Families the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program. The purpose of the program is to provide funding to counties ~~with~~ which they may use to ~~can~~ plan, implement, or expand initiatives that increase public safety, avert increased spending on criminal justice, and improve the accessibility and effectiveness of treatment services for adults and juveniles who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders and who are in, or at risk of entering, the criminal or juvenile justice systems.

(2) The department shall establish a Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee. The committee shall include:

(a) One representative of the Department of Children and Families;

(b) One representative of the Department of Corrections;

(c) One representative of the Department of Juvenile Justice;

(d) One representative of the Department of Elderly Affairs; ~~and~~

(e) One representative of the Office of the State Courts

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Administrator;~~.~~

(f) One representative of the Department of Veterans' Affairs;

(g) One representative of the Florida Sheriffs Association;

(h) One representative of the Florida Police Chiefs Association;

(i) One representative of the Florida Association of Counties;

(j) One representative of the Florida Alcohol and Drug Abuse Association;

(k) One representative of the Florida Association of Managing Entities;

(l) One representative of the Florida Council for Community Mental Health;

(m) One representative of the Florida Prosecuting Attorneys Association;

(n) One representative of the Florida Public Defender Association; and

(o) One administrator of an assisted living facility that holds a limited mental health license.

(3) The committee shall serve as the advisory body to review policy and funding issues that help reduce the impact of persons with mental illness and substance abuse disorders on communities, criminal justice agencies, and the court system. The committee shall advise the department in selecting priorities for grants and investing awarded grant moneys.

(4) The committee must have experience in substance use and mental health disorders, community corrections, and law enforcement. To the extent possible, the ~~members of the~~

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committee shall have expertise in grant review ~~writing, grant reviewing,~~ and grant application scoring.

(5)(a) ~~(3)(a)~~ A county, or a not-for-profit community provider or managing entity designated by the county planning council or committee, as described in s. 394.657, may apply for a 1-year planning grant or a 3-year implementation or expansion grant. The purpose of the grants is to demonstrate that investment in treatment efforts related to mental illness, substance abuse disorders, or co-occurring mental health and substance abuse disorders results in a reduced demand on the resources of the judicial, corrections, juvenile detention, and health and social services systems.

(b) To be eligible to receive a 1-year planning grant or a 3-year implementation or expansion grant:~~,~~

1. A county applicant must have a ~~county~~ planning council or committee that is in compliance with the membership requirements set forth in this section.

2. A not-for-profit community provider or managing entity must be designated by the county planning council or committee and have written authorization to submit an application. A not-for-profit community provider or managing entity must have written authorization for each submitted application.

(c) The department may award a 3-year implementation or expansion grant to an applicant who has not received a 1-year planning grant.

(d) The department may require an applicant to conduct sequential intercept mapping for a project. For purposes of this paragraph, the term "sequential intercept mapping" means a process for reviewing a local community's mental health,

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substance abuse, criminal justice, and related systems and identifying points of interceptions where interventions may be made to prevent an individual with a substance abuse disorder or mental illness from deeper involvement in the criminal justice system.

(6) ~~(4)~~ The grant review and selection committee shall select the grant recipients and notify the department ~~of Children and Families~~ in writing of the recipients' names ~~of the applicants who have been selected by the committee to receive a grant~~. Contingent upon the availability of funds and upon notification by the grant review and selection committee of those applicants approved to receive planning, implementation, or expansion grants, the department ~~of Children and Families~~ may transfer funds appropriated for the grant program to a selected grant recipient ~~to any county awarded a grant~~.

Section 16. Section 394.761, Florida Statutes, is created to read:

394.761 Revenue maximization.—The department, in coordination with the Agency for Health Care and the managing entities, shall compile detailed documentation of the cost and reimbursements for Medicaid covered services provided to Medicaid eligible individuals by providers of behavioral health services that are also funded for programs authorized by this chapter and chapter 397. The department's documentation, along with a report of general revenue funds supporting behavioral health services that are not counted as maintenance of effort or match for any other federal program, will be submitted to the Agency for Health Care Administration by December 31, 2016. Copies of the report must also be provided to the Governor, the


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President of the Senate, and the Speaker of the House of Representatives. If this report presents clear evidence that Medicaid reimbursements are less than the costs of providing the services, the Agency for Health Care Administration and the Department of Children and Families will prepare and submit any budget amendments necessary to use unmatched general revenue funds in the 2016-2017 fiscal year to draw additional federal funding to increase Medicaid funding to behavioral health service providers receiving the unmatched general revenue. Payments shall be made to providers in such manner as is allowed by federal law and regulations.

Section 17. Subsection (11) is added to section 394.875, Florida Statutes, to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required.—

(11) By January 1, 2017, the department and the agency shall modify licensure rules and procedures to create an option for a single, consolidated license for a provider who offers multiple types of mental health and substance abuse services regulated under this chapter and chapter 397. Providers eligible for a consolidated license shall operate these services through a single corporate entity and a unified management structure. Any provider serving adults and children must meet department standards for separate facilities and other requirements necessary to ensure children’s safety and promote therapeutic efficacy.

Section 18. Section 394.9082, Florida Statutes, is amended to read:


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(Substantial rewording of section. See s. 394.9082, F.S., for present text.)

394.9082 Behavioral health managing entities' purpose; definitions; duties; contracting; accountability.—

(1) PURPOSE.—The purpose of the behavioral health managing entities is to plan, coordinate and contract for the delivery of community mental health and substance abuse services, to improve access to care, to promote service continuity, to purchase services, and to support efficient and effective delivery of services.

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

(a) "Behavioral health services" means mental health services and substance abuse prevention and treatment services as described in this chapter and chapter 397.

(b) "Case management" means those direct services provided to a client in order to assess needs, plan or arrange services, coordinate service providers, monitor service delivery, and evaluate outcomes.

(c) "Coordinated system of care" means the full array of behavioral health and related services in a region or a community offered by all service providers, whether participating under contract with the managing entity or through another method of community partnership or mutual agreement.

(d) "Geographic area" means one or more contiguous counties, circuits, or regions as described in s. 409.966.

(e) "High-need or high-utilization individual" means a recipient who meets one or more of the following criteria and may be eligible for intensive case management services:

1. Has resided in a state mental health facility for at

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least 6 months in the last 36 months;

2. Has had two or more admissions to a state mental health facility in the last 36 months; or

3. Has had three or more admissions to a crisis stabilization unit, an addictions receiving facility, a short-term residential detoxification facility, or an inpatient psychiatric unit within the last 12 months.

(f) "Managed behavioral health organization" means a Medicaid managed care organization currently under contract with the statewide Medicaid managed medical assistance program in this state pursuant to part IV of chapter 409, including a managed care organization operating as a behavioral health specialty plan.

(g) "Managing entity" means a corporation designated or filed as a nonprofit organization under s. 501(c)(3) of the Internal Revenue Code which is selected by, and is under contract with, the department to manage the daily operational delivery of behavioral health services through a coordinated system of care.

(h) "Provider network" means the group of direct service providers, facilities, and organizations under contract with a managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services, including prevention services.

(i) "Receiving facility" means any public or private facility designated by the department to receive and hold or to refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate

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service provider. County jails may not be used or designated as a receiving facility, a triage center, or an access center.

(3) DEPARTMENT DUTIES.—The department shall:

(a) Designate, with input from the managing entity, facilities that meet the definitions in s. 394.455(1), (2), (13), and (41) and the receiving system developed by one or more counties pursuant to s. 394.4573(2)(b).

(b) Contract with organizations to serve as the managing entity in accordance with the requirements of this section.

(c) Specify the geographic area served.

(d) Specify data reporting and use of shared data systems.

(e) Develop strategies to divert persons with mental illness or substance abuse disorders from the criminal and juvenile justice systems.

(f) Support the development and implementation of a coordinated system of care by requiring each provider that receives state funds for behavioral health services through a direct contract with the department to work with the managing entity in the provider's service area to coordinate the provision of behavioral health services, as part of the contract with the department.

(g) Require that any public receiving facility initiating a patient transfer to a licensed hospital for acute care mental health services not accessible through the public receiving facility notify the hospital of such transfer and provide all records relating to the emergency psychiatric or medical condition.

(h) Set performance measures and performance standards for managing entities based on nationally recognized standards, such


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as those developed by the National Quality Forum, the National Committee for Quality Assurance, or similar credible sources. Performance standards must include all of the following:

1. Annual improvement in the extent to which the need for behavioral health services is met by the coordinated system of care in the geographic area served.

2. Annual improvement in the percentage of patients who receive services through the coordinated system of care and who achieve improved functional status as indicated by health condition, employment status, and housing stability.

3. Annual reduction in the rates of readmissions to acute care facilities, jails, prisons, and forensic facilities for persons receiving care coordination.

4. Annual improvement in consumer and family satisfaction.

(i) Provide technical assistance to the managing entities.

(j) Promote the integration of behavioral health care and primary care.

(k) Facilitate the coordination between the managing entity and other payors of behavioral health care.

(l) Develop and provide a unique identifier for clients receiving services under the managing entity to coordinate care.

(m) Coordinate procedures for the referral and admission of patients to, and the discharge of patients from, state treatment facilities and their return to the community.

(n) Ensure that managing entities comply with state and federal laws, rules, and regulations.

(o) Develop rules for the operations of, and the requirements that must be met by, the managing entity, if necessary.

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(4) CONTRACT FOR SERVICES.—

(a) In contracting for services with managing entities under this section, the department must first attempt to contract with not-for-profit, community-based organizations that have competence in managing networks of providers serving persons with mental health and substance abuse disorders.

(b) The department shall issue an invitation to negotiate under s. 287.057 to select an organization to serve as a managing entity. If the department receives fewer than two responsive bids to the solicitation, the department shall reissue the invitation to negotiate, in which case managed behavioral health organizations shall be eligible to bid and be awarded a contract.

(c) If the managing entity is a not-for-profit, community-based organization, it must have a governing board that is representative. At a minimum, the governing board must include consumers and their family members; representatives of local government, area law enforcement agencies, health care facilities, and community-based care lead agencies; business leaders; and providers of substance abuse and mental health services as defined in this chapter and chapter 397.

(d) If the managing entity is a managed behavioral health organization, it must establish an advisory board that meets the same requirements specified in paragraph (c) for a governing board.

(e) If the department issues an invitation to negotiate pursuant to paragraph (b), the department shall consider the advice and recommendations of the provider network and community stakeholders in determining the criteria and relative weight of

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the criteria that will be used in the solicitation of the new contractor. The department shall consider all of the following factors:

1. Experience serving persons with mental health and substance abuse disorders.

2. Establishment of community partnerships with behavioral health providers.

3. Demonstrated organizational capabilities for network management functions.

4. Capability to coordinate behavioral health with primary care services.

(f) The department's contracts with managing entities must support efficient and effective administration of the behavioral health system and ensure accountability for performance.

(g) A contractor serving as a managing entity shall operate under the same data reporting, administrative, and administrative rate requirements, regardless of whether it is a for-profit or a not-for-profit entity.

(h) The contract must designate the geographic area that will be served by the managing entity, which area must be of sufficient size in population, funding, and services to allow for flexibility and efficiency.

(i) The contract must require that, when there is a change in the managing entity in a geographic area, a transition plan be developed and implemented by the department which ensures continuity of care for patients receiving behavioral health services.

(j) As of October 31, 2019, if all other contract requirements and performance standards are met and the

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department determines that the managing entity has made progress toward the implementation of a coordinated system of care in its geographic region, the department may continue its contract with the managing entity for up to, but not exceeding, 5 years, including any and all renewals and extensions. Thereafter, the department must issue a competitive solicitation pursuant to paragraph (b).

(5) MANAGING ENTITIES DUTIES.—A managing entity shall:

(a) Maintain a board of directors that is representative of the community and that, at a minimum, includes consumers and family members, community stakeholders and organizations, and providers of mental health and substance abuse services, including public and private receiving facilities.

(b) Conduct a community behavioral health care needs assessment in the geographic area served by the managing entity. The needs assessment must be updated annually and provided to the department. The assessment must include, at a minimum, the information the department needs for its annual report to the Governor and Legislature pursuant to s. 394.4573.

(c) Develop local resources by pursuing third-party payments for services, applying for grants, assisting providers in securing local matching funds and in-kind services, and any other methods needed to ensure services are available and accessible.

(d) Provide assistance to counties to develop a designated receiving system pursuant to s. 394.4573(2)(b) and a transportation plan pursuant to s. 394.462.

(e) Promote the development and effective implementation of a coordinated system of care pursuant to s. 394.4573.

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(f) Develop a comprehensive network of qualified providers to deliver behavioral health services. The managing entity is not required to competitively procure network providers, but must have a process in place to publicize opportunities to join the network and to evaluate providers in the network to determine if they can remain in the network. These processes must be published on the website of the managing entity. The managing entity must ensure continuity of care for clients if a provider ceases to provide a service or leaves the network.

(g) Enter into cooperative agreements with local homeless councils and organizations to allow the sharing of available resource information, shared client information, client referral services, and any other data or information that may be useful in addressing the homelessness of persons suffering from a behavioral health crisis. All information sharing must comply with federal and state privacy and confidentiality laws, statutes and regulations.

(h) Monitor network providers' performance and their compliance with contract requirements and federal and state laws, rules, and regulations.

(i) Provide or contract for case management services.

(j) Manage and allocate funds for services to meet the requirements of law or rule.

(k) Promote integration of behavioral health with primary care.

(l) Implement shared data systems necessary for the delivery of coordinated care and integrated services, the assessment of managing entity performance and provider performance, and the reporting of outcomes and costs of

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services.

(m) Operate in a transparent manner, providing public access to information, notice of meetings, and opportunities for public participation in managing entity decision-making.

(n) Establish and maintain effective relationships with community stakeholders, including local governments and other organizations that serve individuals with behavioral health needs.

(o) Collaborate with local criminal and juvenile justice systems to divert persons with mental illness or substance abuse disorders, or both, from the criminal and juvenile justice systems.

(p) Collaborate with the local court system to develop procedures to maximize the use of involuntary outpatient services; reduce involuntary inpatient treatment; and increase diversion from the criminal and juvenile justice systems.

(6) FUNDING FOR MANAGING ENTITIES.—

(a) A contract established between the department and a managing entity under this section must be funded by general revenue, other applicable state funds, or applicable federal funding sources. A managing entity may carry forward documented unexpended state funds from one fiscal year to the next, but the cumulative amount carried forward may not exceed 8 percent of the total value of the contract. Any unexpended state funds in excess of that percentage must be returned to the department. The funds carried forward may not be used in a way that would increase future recurring obligations or for any program or service that was not authorized as of July 1, 2016, under the existing contract with the department. Expenditures of funds

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carried forward must be separately reported to the department. Any unexpended funds that remain at the end of the contract period must be returned to the department. Funds carried forward may be retained through contract renewals and new contract procurements as long as the same managing entity is retained by the department.

(b) The method of payment for a fixed-price contract with a managing entity must provide for a 2-month advance payment at the beginning of each fiscal year and equal monthly payments thereafter.

(7) CRISIS STABILIZATION SERVICES UTILIZATION DATABASE.—The department shall develop, implement, and maintain standards under which a managing entity shall collect utilization data from all public receiving facilities situated within its geographic service area. As used in this subsection, the term "public receiving facility" means an entity that meets the licensure requirements of, and is designated by, the department to operate as a public receiving facility under s. 394.875 and that is operating as a licensed crisis stabilization unit.

(a) The department shall develop standards and protocols for managing entities and public receiving facilities to be used for data collection, storage, transmittal, and analysis. The standards and protocols must allow for compatibility of data and data transmittal between public receiving facilities, managing entities, and the department for the implementation and requirements of this subsection.

(b) A managing entity shall require a public receiving facility within its provider network to submit data, in real time or at least daily, to the managing entity for:


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1. All admissions and discharges of clients receiving public receiving facility services who qualify as indigent, as defined in s. 394.4787; and

2. The current active census of total licensed beds, the number of beds purchased by the department, the number of clients qualifying as indigent who occupy those beds, and the total number of unoccupied licensed beds regardless of funding.

(c) A managing entity shall require a public receiving facility within its provider network to submit data, on a monthly basis, to the managing entity which aggregates the daily data submitted under paragraph (b). The managing entity shall reconcile the data in the monthly submission to the data received by the managing entity under paragraph (b) to check for consistency. If the monthly aggregate data submitted by a public receiving facility under this paragraph are inconsistent with the daily data submitted under paragraph (b), the managing entity shall consult with the public receiving facility to make corrections necessary to ensure accurate data.

(d) A managing entity shall require a public receiving facility within its provider network to submit data, on an annual basis, to the managing entity which aggregates the data submitted and reconciled under paragraph (c). The managing entity shall reconcile the data in the annual submission to the data received and reconciled by the managing entity under paragraph (c) to check for consistency. If the annual aggregate data submitted by a public receiving facility under this paragraph are inconsistent with the data received and reconciled under paragraph (c), the managing entity shall consult with the public receiving facility to make corrections necessary to


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ensure accurate data.

(e) After ensuring the accuracy of data pursuant to paragraphs (c) and (d), the managing entity shall submit the data to the department on a monthly and an annual basis. The department shall create a statewide database for the data described under paragraph (b) and submitted under this paragraph for the purpose of analyzing the payments for and the use of crisis stabilization services funded by the Baker Act on a statewide basis and on an individual public receiving facility basis.

Section 19. Present subsections (20) through (45) of section 397.311, Florida Statutes, are redesignated as subsections (22) through (47), respectively, new subsections (20) and (21) are added to that section, and present subsections (30) and (38) of that section are amended, to read:

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

(20) "Informed consent" means consent voluntarily given in writing by a competent person after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(21) "Involuntary services" means an array of behavioral health services that may be ordered by the court for persons with substance abuse or co-occurring mental health disorders.

(31)~~(30)~~ "Qualified professional" means a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an

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advanced registered nurse practitioner ~~having a specialty in psychiatry~~ licensed under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

(39) ~~(38)~~ "Service component" or "component" means a discrete operational entity within a service provider which is subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment described in subsection (24) ~~(22)~~.

Section 20. Section 397.675, Florida Statutes, is amended to read:

397.675 Criteria for involuntary admissions, including protective custody, emergency admission, and other involuntary assessment, involuntary treatment, and alternative involuntary assessment for minors, for purposes of assessment and stabilization, and for involuntary treatment.—A person meets the criteria for involuntary admission if there is good faith reason to believe that the person has a substance abuse or co-occurring mental health disorder ~~is substance abuse impaired~~ and, because of such disorder ~~impairment~~:

(1) Has lost the power of self-control with respect to

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substance abuse ~~use~~; and ~~either~~

(2)(a) ~~Has inflicted, or threatened or attempted to inflict, or unless admitted is likely to inflict, physical harm on himself or herself or another; or~~

~~(b)~~ Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she ~~the person~~ is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although ~~thereto; however,~~ mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services.

(b) Without care or treatment, is likely to suffer from neglect or to refuse to care for himself or herself, that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another.

Section 21. Section 397.679, Florida Statutes, is amended to read:

397.679 Emergency admission; circumstances justifying.—A person who meets the criteria for involuntary admission in s. 397.675 may be admitted to a hospital or to a licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only,


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upon receipt by the facility of a ~~the physician's~~ certificate by a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's-level-certified addictions professional, if the certificate is specific to substance abuse disorders, and the completion of an application for emergency admission.

Section 22. Section 397.6791, Florida Statutes, is amended to read:

397.6791 Emergency admission; persons who may initiate.—The following professionals ~~persons~~ may request a certificate for ~~an~~ emergency assessment or admission:

(1) In the case of an adult, physicians, advanced registered nurse practitioners, clinical psychologists, licensed clinical social workers, licensed marriage and family therapists, licensed mental health counselors, physician assistants working under the scope of practice of the supervising physician, and a master's-level-certified addictions professional, if the certificate is specific to substance abuse disorders ~~the certifying physician~~, the person's spouse or legal guardian, any relative of the person, or any other responsible adult who has personal knowledge of the person's substance abuse impairment.

(2) In the case of a minor, the minor's parent, legal guardian, or legal custodian.

Section 23. Section 397.6793, Florida Statutes, is amended to read:

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397.6793 Professional's ~~Physician's~~ certificate for emergency admission.—

(1) The professional's ~~physician's~~ certificate must include the name of the person to be admitted, the relationship between the person and the professional executing the certificate ~~physician~~, the relationship between the applicant and the professional ~~physician~~, any relationship between the professional ~~physician~~ and the licensed service provider, ~~and~~ a statement that the person has been examined and assessed within the preceding 5 days of the application date, and ~~must include~~ factual allegations with respect to the need for emergency admission, including:

(a) The reason for the ~~physician's~~ belief that the person is substance abuse impaired; and

(b) The reason for the ~~physician's~~ belief that because of such impairment the person has lost the power of self-control with respect to substance abuse; and ~~either~~

(c)1. The reason for the belief ~~physician believes~~ that, without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services or there is substantial likelihood that the person has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

2. The reason for the belief ~~physician believes~~ that the person's refusal to voluntarily receive care is based on

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judgment so impaired by reason of substance abuse that the person is incapable of appreciating his or her need for care and of making a rational decision regarding his or her need for care.

(2) The professional's ~~physician's~~ certificate must recommend the least restrictive type of service that is appropriate for the person. The certificate must be signed by the professional ~~physician~~. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the appropriate facility for involuntary examination.

(3) A signed copy of the professional's ~~physician's~~ certificate shall accompany the person~~,~~ and shall be made a part of the person's clinical record, together with a signed copy of the application. The application and the professional's ~~physician's~~ certificate authorize the involuntary admission of the person pursuant to, and subject to the provisions of, ss. 397.679-397.6797.

(4) The professional's certificate is valid for 7 days after issuance.

(5) The professional's ~~physician's~~ certificate must indicate whether the person requires transportation assistance for delivery for emergency admission and specify, pursuant to s. 397.6795, the type of transportation assistance necessary.

Section 24. Section 397.6795, Florida Statutes, is amended to read:

397.6795 Transportation-assisted delivery of persons for emergency assessment.—An applicant for a person's emergency


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admission, ~~or~~ the person's spouse or guardian, or a law enforcement officer~~, or a health officer~~ may deliver a person named in the professional's ~~physician's~~ certificate for emergency admission to a hospital or a licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization.

Section 25. Subsection (1) of section 397.681, Florida Statutes, is amended to read:

397.681 Involuntary petitions; general provisions; court jurisdiction and right to counsel.—

(1) JURISDICTION.—The courts have jurisdiction of involuntary assessment and stabilization petitions and involuntary treatment petitions for substance abuse impaired persons, and such petitions must be filed with the clerk of the court in the county where the person is located. The clerk of the court may not charge a fee for the filing of a petition under this section. The chief judge may appoint a general or special magistrate to preside over all or part of the proceedings. The alleged impaired person is named as the respondent.

Section 26. Subsection (1) of section 397.6811, Florida Statutes, is amended to read:

397.6811 Involuntary assessment and stabilization.—A person determined by the court to appear to meet the criteria for involuntary admission under s. 397.675 may be admitted for a period of 5 days to a hospital or to a licensed detoxification facility or addictions receiving facility, for involuntary assessment and stabilization or to a less restrictive component of a licensed service provider for assessment only upon entry of

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a court order or upon receipt by the licensed service provider of a petition. Involuntary assessment and stabilization may be initiated by the submission of a petition to the court.

(1) If the person upon whose behalf the petition is being filed is an adult, a petition for involuntary assessment and stabilization may be filed by the respondent's spouse, ~~or~~ legal guardian, any relative, a private practitioner, the director of a licensed service provider or the director's designee, or any individual ~~three adults~~ who has direct ~~have~~ personal knowledge of the respondent's substance abuse impairment.

Section 27. Section 397.6814, Florida Statutes, is amended to read:

397.6814 Involuntary assessment and stabilization; contents of petition.—A petition for involuntary assessment and stabilization must contain the name of the respondent, ~~;~~ the name of the applicant or applicants, ~~;~~ the relationship between the respondent and the applicant, and~~;~~ the name of the respondent's attorney, if known, ~~and a statement of the respondent's ability to afford an attorney;~~ and must state facts to support the need for involuntary assessment and stabilization, including:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired; ~~and~~

(2) The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and ~~either~~

(3)(a) The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

(b) The reason the petitioner believes that the

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respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care. If the respondent has refused to submit to an assessment, such refusal must be alleged in the petition.

A fee may not be charged for the filing of a petition pursuant to this section.

Section 28. Section 397.6819, Florida Statutes, is amended to read:

397.6819 Involuntary assessment and stabilization; responsibility of licensed service provider.—

(1) A licensed service provider may admit an individual for involuntary assessment and stabilization for a period not to exceed 5 days unless a petition has been filed pursuant to s. 397.6821 or s. 397.6822. The individual must be assessed within 72 hours ~~without unnecessary delay~~ by a qualified professional. If an assessment is performed by a qualified professional who is not a physician, the assessment must be reviewed by a physician before the end of the assessment period.

(2) The managing entity must be notified of the recommendation for involuntary services so that it may assist in locating and providing the requested services, if such services are available. The managing entity shall document its efforts to obtain the recommended services.

Section 29. Section 397.695, Florida Statutes, is amended to read:

397.695 Involuntary services ~~treatment~~; persons who may

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petition.—

(1)(a) If the respondent is an adult, a petition for involuntary services ~~treatment~~ may be filed by the respondent's spouse or legal guardian, any relative, a service provider, or any individual ~~three adults~~ who has direct ~~have~~ personal knowledge of the respondent's substance abuse impairment and his or her prior course of assessment and treatment.

(2) If the respondent is a minor, a petition for involuntary treatment may be filed by a parent, legal guardian, or service provider.

Section 30. Section 397.6951, Florida Statutes, is amended to read:

397.6951 Contents of petition for involuntary services ~~treatment~~.—A petition for involuntary services ~~treatment~~ must contain the name of the respondent ~~to be admitted~~; the name of the petitioner or petitioners; the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known~~, and a statement of the petitioner's knowledge of the respondent's ability to afford an attorney~~; the findings and recommendations of the assessment performed by the qualified professional; and the factual allegations presented by the petitioner establishing the need for involuntary outpatient services. The factual allegations must demonstrate ~~treatment, including~~:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired; ~~and~~

(2) The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and either

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(3)(a) The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless the court orders the involuntary services ~~admitted~~; or

(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

Section 31. Section 397.6955, Florida Statutes, is amended to read:

397.6955 Duties of court upon filing of petition for involuntary services ~~treatment~~.—

(1) Upon the filing of a petition for ~~the~~ involuntary services for ~~treatment of~~ a substance abuse impaired person with the clerk of the court, the court shall immediately determine whether the respondent is represented by an attorney or whether the appointment of counsel for the respondent is appropriate. If the court appoints counsel for the person, the clerk of the court shall immediately notify the regional conflict counsel, created pursuant to s. 27.511, of the appointment. The regional conflict counsel shall represent the person until the petition is dismissed, the court order expires, or the person is discharged from involuntary services. An attorney that represents the person named in the petition shall have access to the person, witnesses, and records relevant to the presentation of the person's case and shall represent the interests of the person, regardless of the source of payment to the attorney.

(2) The court shall schedule a hearing to be held on the

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petition within 5 ~~10~~ days unless a continuance is granted. The court may appoint a magistrate to preside at the hearing.

(3) A copy of the petition and notice of the hearing must be provided to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct. If the respondent is a minor, a copy of the petition and notice of the hearing must be ~~and have such petition and order~~ personally delivered to the respondent ~~if he or she is a minor~~. The court shall also issue a summons to the person whose admission is sought.

Section 32. Section 397.6957, Florida Statutes, is amended to read:

397.6957 Hearing on petition for involuntary services ~~treatment~~.—

(1) At a hearing on a petition for involuntary services ~~treatment~~, the court shall hear and review all relevant evidence, including the review of results of the assessment completed by the qualified professional in connection with the respondent's protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. The respondent must be present unless the court finds that his or her presence is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act in behalf of the respondent throughout the proceedings.

(2) The petitioner has the burden of proving by clear and convincing evidence that:

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(a) The respondent is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse;~~, and~~

(b) Because of such impairment the respondent is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary ~~the respondent has lost the power of self-control with respect to substance abuse~~; and ~~either~~

1. Without services, the respondent is likely to suffer from neglect or to refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that there is a substantial likelihood that without services the respondent will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior ~~The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted~~; or

2. The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

(3) One of the qualified professionals who executed the involuntary services certificate must be a witness. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the respondent's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be under oath, and the proceedings must be


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recorded. The patient may refuse to testify at the hearing.

(4)~~(3)~~ At the conclusion of the hearing the court shall ~~either~~ dismiss the petition or order the respondent to receive ~~undergo~~ involuntary services from his or her ~~substance abuse treatment, with the respondent's~~ chosen licensed service provider if ~~to deliver the involuntary substance abuse treatment where~~ possible and appropriate.

Section 33. Section 397.697, Florida Statutes, is amended to read:

397.697 Court determination; effect of court order for involuntary services ~~substance abuse treatment~~.—

(1) When the court finds that the conditions for involuntary services ~~substance abuse treatment~~ have been proved by clear and convincing evidence, it may order the respondent to receive ~~undergo~~ involuntary services from ~~treatment by~~ a licensed service provider for a period not to exceed 90 ~~60~~ days. The court may order a respondent to undergo treatment through a privately funded licensed service provider if the respondent has the ability to pay for the treatment, or if any person on the respondent's behalf voluntarily demonstrates a willingness and an ability to pay for the treatment. If the court finds it necessary, it may direct the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order, or to the nearest appropriate licensed service provider, for involuntary services ~~treatment~~. When the conditions justifying involuntary services ~~treatment~~ no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary services ~~treatment~~ are expected to exist after 90 ~~60~~ days of services


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~~treatment~~, a renewal of the involuntary services ~~treatment~~ order may be requested pursuant to s. 397.6975 before ~~prior to~~ the end of the 90 ~~60~~-day period.

(2) In all cases resulting in an order for involuntary services ~~substance abuse treatment~~, the court shall retain jurisdiction over the case and the parties for the entry of such further orders as the circumstances may require. The court's requirements for notification of proposed release must be included in the original ~~treatment~~ order.

(3) An involuntary services ~~treatment~~ order authorizes the licensed service provider to require the individual to receive services that ~~undergo such treatment as~~ will benefit him or her, including services ~~treatment~~ at any licensable service component of a licensed service provider.

(4) If the court orders involuntary services, a copy of the order must be sent to the managing entity within 1 working day after it is received from the court. Documents may be submitted electronically though existing data systems, if applicable.

Section 34. Section 397.6971, Florida Statutes, is amended to read:

397.6971 Early release from involuntary services ~~substance abuse treatment~~.—

(1) At any time before ~~prior to~~ the end of the 90 ~~60~~-day involuntary services ~~treatment~~ period, or ~~prior to~~ the end of any extension granted pursuant to s. 397.6975, an individual receiving ~~admitted for~~ involuntary services ~~treatment~~ may be determined eligible for discharge to the most appropriate referral or disposition for the individual when any of the following apply:

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(a) The individual no longer meets the criteria for involuntary admission and has given his or her informed consent to be transferred to voluntary treatment status.~~;~~

(b) If the individual was admitted on the grounds of likelihood of infliction of physical harm upon himself or herself or others, such likelihood no longer exists.~~; or~~

(c) If the individual was admitted on the grounds of need for assessment and stabilization or treatment, accompanied by inability to make a determination respecting such need~~, either~~:

1. Such inability no longer exists; or

2. It is evident that further treatment will not bring about further significant improvements in the individual's condition.~~;~~

(d) The individual is no longer in need of services.~~; or~~

(e) The director of the service provider determines that the individual is beyond the safe management capabilities of the provider.

(2) Whenever a qualified professional determines that an individual admitted for involuntary services qualifies ~~treatment is ready~~ for early release under ~~for any of the reasons listed in~~ subsection (1), the service provider shall immediately discharge the individual~~,~~ and must notify all persons specified by the court in the original treatment order.

Section 35. Section 397.6975, Florida Statutes, is amended to read:

397.6975 Extension of involuntary services ~~substance abuse treatment~~ period.—

(1) Whenever a service provider believes that an individual who is nearing the scheduled date of his or her release from

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involuntary services ~~treatment~~ continues to meet the criteria for involuntary services ~~treatment~~ in s. 397.693, a petition for renewal of the involuntary services ~~treatment~~ order may be filed with the court at least 10 days before the expiration of the court-ordered services ~~treatment~~ period. The court shall immediately schedule a hearing to be held not more than 15 days after filing of the petition. The court shall provide the copy of the petition for renewal and the notice of the hearing to all parties to the proceeding. The hearing is conducted pursuant to s. 397.6957.

(2) If the court finds that the petition for renewal of the involuntary services ~~treatment~~ order should be granted, it may order the respondent to receive ~~undergo~~ involuntary services ~~treatment~~ for a period not to exceed an additional 90 days. When the conditions justifying involuntary services ~~treatment~~ no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary services ~~treatment~~ continue to exist after an additional 90 days of service ~~additional treatment~~, a new petition requesting renewal of the involuntary services ~~treatment~~ order may be filed pursuant to this section.

(3) Within 1 court working day after the filing of a petition for continued involuntary services, the court shall appoint the regional conflict counsel to represent the respondent, unless the respondent is otherwise represented by counsel. The clerk of the court shall immediately notify the regional conflict counsel of such appointment. The regional conflict counsel shall represent the respondent until the petition is dismissed or the court order expires or the


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respondent is discharged from involuntary services. Any attorney representing the respondent shall have access to the respondent, witnesses, and records relevant to the presentation of the respondent's case and shall represent the interests of the respondent, regardless of the source of payment to the attorney.

(4) Hearings on petitions for continued involuntary services shall be before the circuit court. The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this section shall be in accordance with s. 397.697.

(5) Notice of hearing shall be provided to the respondent or his or her counsel. The respondent and the respondent's counsel may agree to a period of continued involuntary services without a court hearing.

(6) The same procedure shall be repeated before the expiration of each additional period of involuntary services.

(7) If the respondent has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the respondent's competence.

Section 36. Section 397.6977, Florida Statutes, is amended to read:

397.6977 Disposition of individual upon completion of involuntary services ~~substance abuse treatment~~.—At the conclusion of the 90 ~~60~~-day period of court-ordered involuntary services ~~treatment~~, the respondent ~~individual~~ is automatically discharged unless a motion for renewal of the involuntary services ~~treatment~~ order has been filed with the court pursuant to s. 397.6975.

Section 37. Section 397.6978, Florida Statutes, is created

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to read:

397.6978 Guardian advocate; patient incompetent to consent; substance abuse disorder.—

(1) The administrator of a receiving facility or addictions receiving facility may petition the court for the appointment of a guardian advocate based upon the opinion of a qualified professional that the patient is incompetent to consent to treatment. If the court finds that a patient is incompetent to consent to treatment and has not been adjudicated incapacitated and that a guardian with the authority to consent to mental health treatment has not been appointed, it may appoint a guardian advocate. The patient has the right to have an attorney represent him or her at the hearing. If the person is indigent, the court shall appoint the office of the regional conflict counsel to represent him or her at the hearing. The patient has the right to testify, cross-examine witnesses, and present witnesses. The proceeding shall be recorded electronically or stenographically, and testimony must be provided under oath. One of the qualified professionals authorized to give an opinion in support of a petition for involuntary placement, as described in s. 397.675 or s. 397.6981, must testify. A guardian advocate must meet the qualifications of a guardian contained in part IV of chapter 744. The person who is appointed as a guardian advocate must agree to the appointment.

(2) The following persons are prohibited from appointment as a patient’s guardian advocate:

(a) A professional providing clinical services to the individual under this part.

(b) The qualified professional who initiated the

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involuntary examination of the individual, if the examination was initiated by a qualified professional's certificate.

(c) An employee, an administrator, or a board member of the facility providing the examination of the individual.

(d) An employee, an administrator, or a board member of the treatment facility providing treatment of the individual.

(e) A person providing any substantial professional services, excluding public guardians or professional guardians, to the individual, including clinical services.

(f) A creditor of the individual.

(g) A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of injunction is temporary or final, and for which the individual was the petitioner.

(h) A person subject to an injunction for protection against repeat violence, stalking, sexual violence, or dating violence under s. 784.046, whether the order of injunction is temporary or final, and for which the individual was the petitioner.

(3) A facility requesting appointment of a guardian advocate must, before the appointment, provide the prospective guardian advocate with information about the duties and responsibilities of guardian advocates, including information about the ethics of medical decision-making. Before asking a guardian advocate to give consent to treatment for a patient, the facility must provide to the guardian advocate sufficient information so that the guardian advocate can decide whether to give express and informed consent to the treatment. Such information must include information that demonstrates that the

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treatment is essential to the care of the patient and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. If possible, before giving consent to treatment, the guardian advocate must personally meet and talk with the patient and the patient's physician. If that is not possible, the discussion may be conducted by telephone. The decision of the guardian advocate may be reviewed by the court, upon petition of the patient's attorney, the patient's family, or the facility administrator.

(4) In lieu of the training required for guardians appointed pursuant to chapter 744, a guardian advocate shall attend at least a 4-hour training course approved by the court before exercising his or her authority. At a minimum, the training course must include information about patient rights, the diagnosis of substance abuse disorders, the ethics of medical decision-making, and the duties of guardian advocates.

(5) The required training course and the information to be supplied to prospective guardian advocates before their appointment must be developed by the department, approved by the chief judge of the circuit court, and taught by a court-approved organization, which may include, but need not be limited to, a community college, a guardianship organization, a local bar association, or The Florida Bar. The training course may be web-based, provided in video format, or other electronic means but must be capable of ensuring the identity and participation of the prospective guardian advocate. The court may waive some or all of the training requirements for guardian advocates or impose additional requirements. The court shall make its decision on a case-by-case basis and, in making its decision,

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shall consider the experience and education of the guardian advocate, the duties assigned to the guardian advocate, and the needs of the patient.

(6) In selecting a guardian advocate, the court shall give preference to the patient's health care surrogate, if one has already been designated by the patient. If the patient has not previously designated a health care surrogate, the selection shall be made, except for good cause documented in the court record, from among the following persons, listed in order of priority:

(a) The patient's spouse.

(b) An adult child of the patient.

(c) A parent of the patient.

(d) The adult next of kin of the patient.

(e) An adult friend of the patient.

(f) An adult trained and willing to serve as the guardian advocate for the patient.

(7) If a guardian with the authority to consent to medical treatment has not already been appointed, or if the patient has not already designated a health care surrogate, the court may authorize the guardian advocate to consent to medical treatment as well as substance abuse disorder treatment. Unless otherwise limited by the court, a guardian advocate with authority to consent to medical treatment has the same authority to make health care decisions and is subject to the same restrictions as a proxy appointed under part IV of chapter 765. Unless the guardian advocate has sought and received express court approval in a proceeding separate from the proceeding to determine the competence of the patient to consent to medical treatment, the

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guardian advocate may not consent to:

(a) Abortion.

(b) Sterilization.

(c) Electroshock therapy.

(d) Psychosurgery.

(e) Experimental treatments that have not been approved by a federally approved institutional review board in accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56.

The court must base its authorization on evidence that the treatment or procedure is essential to the care of the patient and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. In complying with this subsection, the court shall follow the procedures set forth in subsection (1).

(8) The guardian advocate shall be discharged when the patient is discharged from an order for involuntary services or when the patient is transferred from involuntary to voluntary status. The court or a hearing officer shall consider the competence of the patient as provided in subsection (1) and may consider an involuntarily placed patient's competence to consent to services at any hearing. Upon sufficient evidence, the court may restore, or the magistrate may recommend that the court restore, the patient's competence. A copy of the order restoring competence or the certificate of discharge containing the restoration of competence shall be provided to the patient and the guardian advocate.

Section 38. Present paragraphs (d) through (m) of subsection (2) of section 409.967, are redesignated as

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paragraphs (e) through (n), respectively, and a new paragraph (d) is added to that subsection, to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem necessary, the contract must require:

(d) *Quality care.*—Managed care plans shall provide, or contract for the provision of, care coordination to facilitate the appropriate delivery of behavioral health care services in the least restrictive setting with treatment and recovery capabilities that address the needs of the patient. Services shall be provided in a manner that integrates behavioral health services and primary care. Plans shall be required to achieve specific behavioral health outcome standards, established by the agency in consultation with the department.

Section 39. Subsection (5) is added to section 409.973, Florida Statutes, to read:

409.973 Benefits.—

(5) INTEGRATED BEHAVIORAL HEALTH INITIATIVE.—Each plan operating in the managed medical assistance program shall work with the managing entity in its service area to establish specific organizational supports and protocols that enhance the integration and coordination of primary care and behavioral health services for Medicaid recipients. Progress in this initiative shall be measured using the integration framework and core measures developed by the Agency for Healthcare Research and Quality.

Section 40. Section 491.0045, Florida Statutes, is amended


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to read:

491.0045 Intern registration; requirements.—

(1) ~~Effective January 1, 1998,~~ An individual who has not satisfied ~~intends to practice in Florida to satisfy~~ the postgraduate or post-master's level experience requirements, as specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register as an intern in the profession for which he or she is seeking licensure prior to commencing the post-master's experience requirement or an individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the profession for which he or she is seeking licensure prior to commencing the practicum, internship, or field experience.

(2) The department shall register as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern each applicant who the board certifies has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed $200, as set by board rule;

(b)1. Completed the education requirements as specified in s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which he or she is applying for licensure, if needed; and

2. Submitted an acceptable supervision plan, as determined by the board, for meeting the practicum, internship, or field work required for licensure that was not satisfied in his or her graduate program.

(c) Identified a qualified supervisor.


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(3) An individual registered under this section must remain under supervision while practicing under registered intern status ~~until he or she is in receipt of a license or a letter from the department stating that he or she is licensed to practice the profession for which he or she applied~~.

~~(4) An individual who has applied for intern registration on or before December 31, 2001, and has satisfied the education requirements of s. 491.005 that are in effect through December 31, 2000, will have met the educational requirements for licensure for the profession for which he or she has applied.~~

(4)~~(5)~~ An individual who fails ~~Individuals who have commenced the experience requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c) but failed to register as required by subsection (1) shall register with the department before January 1, 2000. Individuals who fail~~ to comply with this section may ~~subsection shall~~ not be granted a license under this chapter, and any time spent by the individual completing the experience requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c) before ~~prior to~~ registering as an intern does ~~shall~~ not count toward completion of the ~~such~~ requirement.

(5) An intern registration is valid for 5 years.

(6) A registration issued on or before March 31, 2017, expires March 31, 2022, and may not be renewed or reissued. Any registration issued after March 31, 2017, expires 60 months after the date it is issued. A subsequent intern registration may not be issued unless the candidate has passed the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d).

(7) An individual who has held a provisional license issued

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by the board may not apply for an intern registration in the same profession.

Section 41. Section 394.4674, Florida Statutes, is repealed.

Section 42. Section 394.4985, Florida Statutes, is repealed.

Section 43. Section 394.745, Florida Statutes, is repealed.

Section 44. Section 397.331, Florida Statutes, is repealed.

Section 45. Section 397.801, Florida Statutes, is repealed.

Section 46. Section 397.811, Florida Statutes, is repealed.

Section 47. Section 397.821, Florida Statutes, is repealed.

Section 48. Section 397.901, Florida Statutes, is repealed.

Section 49. Section 397.93, Florida Statutes, is repealed.

Section 50. Section 397.94, Florida Statutes, is repealed.

Section 51. Section 397.951, Florida Statutes, is repealed.

Section 52. Section 397.97, Florida Statutes, is repealed.

Section 53. Section 397.98, Florida Statutes, is repealed.

Section 54. Paragraph (a) of subsection (3) 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.—

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455(16) ~~s. 394.455(9)~~ and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion

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of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to the department concerning that child.

Section 55. Paragraph (e) of subsection (5) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties


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authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a

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representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(43) ~~s. 397.311(41)~~. Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall


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provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined before ~~prior to~~ program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for


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Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

Section 56. Paragraph (c) of subsection (2) of section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(c)1. A receiving facility shall give notice of the whereabouts of a minor who is being involuntarily held for examination pursuant to s. 394.463 to the minor's parent, guardian, caregiver, or guardian advocate, in person or by telephone or other form of electronic communication, immediately

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after the minor's arrival at the facility. The facility may delay notification for no more than 24 hours after the minor's arrival if the facility has submitted a report to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect and if the facility deems a delay in notification to be in the minor's best interest.

2. The receiving facility shall attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until the receiving facility receives confirmation from the parent, guardian, caregiver, or guardian advocate, verbally, by telephone or other form of electronic communication, or by recorded message, that notification has been received. Attempts to notify the parent, guardian, caregiver, or guardian advocate must be repeated at least once every hour during the first 12 hours after the minor's arrival and once every 24 hours thereafter and must continue until such confirmation is received, unless the minor is released at the end of the 72-hour examination period, or until a petition for involuntary services ~~placement~~ is filed with the court pursuant to s. 394.463(2)(g) ~~s. 394.463(2)(i)~~. The receiving facility may seek assistance from a law enforcement agency to notify the minor's parent, guardian, caregiver, or guardian advocate if the facility has not received within the first 24 hours after the minor's arrival a confirmation by the parent, guardian, caregiver, or guardian advocate that notification has been received. The receiving facility must document notification attempts in the minor's clinical record.

Section 57. Subsection (3) of section 394.495, Florida

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Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(6), (8), (34), (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~;

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a professional as defined in s. 394.455(6), (8), (34), (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491.

Section 58. Subsection (5) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(5) A professional as defined in s. 394.455(6), (8), (34), (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 59. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(24)(a)4., 397.311(24)(a)1., and 394.455(41) ~~ss. 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(26)~~, respectively.

Section 60. Subsection (15) of section 397.321, Florida Statutes, is amended to read:


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397.321 Duties of the department.—The department shall:

~~(15) Appoint a substance abuse impairment coordinator to represent the department in efforts initiated by the statewide substance abuse impairment prevention and treatment coordinator established in s. 397.801 and to assist the statewide coordinator in fulfilling the responsibilities of that position.~~

Section 61. Subsection (8) of section 397.405, Florida Statutes, is amended to read:

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

(8) A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit religious organization or denomination providing any of the licensed service components itemized under s. 397.311(24) ~~s. 397.311(22)~~ is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious, spiritual, or ecclesiastical in nature.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician or physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced registered nurse

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practitioner licensed under part I of chapter 464, who provides substance abuse treatment, so long as the physician, physician assistant, psychologist, psychotherapist, or advanced registered nurse practitioner does not represent to the public that he or she is a licensed service provider and does not provide services to individuals pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 62. Subsections (1) and (5) of section 397.407, Florida Statutes, are amended to read:

397.407 Licensure process; fees.—

(1) The department shall establish the licensure process to include fees and categories of licenses and must prescribe a fee range that is based, at least in part, on the number and complexity of programs listed in s. 397.311(24) ~~s. 397.311(22)~~ which are operated by a licensee. The fees from the licensure of service components are sufficient to cover at least 50 percent of the costs of regulating the service components. The department shall specify a fee range for public and privately funded licensed service providers. Fees for privately funded licensed service providers must exceed the fees for publicly funded licensed service providers.

(5) The department may issue probationary, regular, and interim licenses. The department shall issue one license for each service component that is operated by a service provider and defined pursuant to s. 397.311(24) ~~s. 397.311(22)~~. The license is valid only for the specific service components listed for each specific location identified on the license. The


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licensed service provider shall apply for a new license at least 60 days before the addition of any service components or 30 days before the relocation of any of its service sites. Provision of service components or delivery of services at a location not identified on the license may be considered an unlicensed operation that authorizes the department to seek an injunction against operation as provided in s. 397.401, in addition to other sanctions authorized by s. 397.415. Probationary and regular licenses may be issued only after all required information has been submitted. A license may not be transferred. As used in this subsection, the term "transfer" includes, but is not limited to, the transfer of a majority of the ownership interest in the licensed entity or transfer of responsibilities under the license to another entity by contractual arrangement.

Section 63. Section 397.416, Florida Statutes, is amended to read:

397.416 Substance abuse treatment services; qualified professional.—Notwithstanding any other provision of law, a person who was certified through a certification process recognized by the former Department of Health and Rehabilitative Services before January 1, 1995, may perform the duties of a qualified professional with respect to substance abuse treatment services as defined in this chapter, and need not meet the certification requirements contained in s. 397.311(32) ~~s. 397.311(30)~~.

Section 64. Subsection (2) of section 397.4871, Florida Statutes, is amended to read:

397.4871 Recovery residence administrator certification.—


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(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary credentialing program for administrators. The department shall approve any credentialing entity that the department endorses pursuant to s. 397.321(15) ~~s. 397.321(16)~~ if the credentialing entity also meets the requirements of this section. The approved credentialing entity shall:

(a) Establish recovery residence administrator core competencies, certification requirements, testing instruments, and recertification requirements.

(b) Establish a process to administer the certification application, award, and maintenance processes.

(c) Develop and administer:

1. A code of ethics and disciplinary process.

2. Biennial continuing education requirements and annual certification renewal requirements.

3. An education provider program to approve training entities that are qualified to provide precertification training to applicants and continuing education opportunities to certified persons.

Section 65. Paragraph (e) of subsection (3) of section 409.966, Florida Statutes, is amended to read:

409.966 Eligible plans; selection.—

(3) QUALITY SELECTION CRITERIA.—

(e) To ensure managed care plan participation in Regions 1 and 2, the agency shall award an additional contract to each plan with a contract award in Region 1 or Region 2. Such contract shall be in any other region in which the plan

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submitted a responsive bid and negotiates a rate acceptable to the agency. If a plan that is awarded an additional contract pursuant to this paragraph is subject to penalties pursuant to s. 409.967(2)(i) ~~s. 409.967(2)(h)~~ for activities in Region 1 or Region 2, the additional contract is automatically terminated 180 days after the imposition of the penalties. The plan must reimburse the agency for the cost of enrollment changes and other transition activities.

Section 66. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a ~~mental health~~ treatment facility ~~facilities~~ as defined in s. 394.455(50) ~~by s. 394.455(32)~~.

Section 67. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) "Drug rehabilitation program" means a service provider, established pursuant to s. 397.311(41) ~~s. 397.311(39)~~, that

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provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to s. 397.311(41) ~~s. 397.311(39)~~.

Section 68. Subsection (7) of section 744.704, Florida Statutes, is amended to read:

744.704 Powers and duties.—

(7) A public guardian may ~~shall~~ not commit a ward to a ~~mental health~~ treatment facility, as defined in s. 394.455(50) ~~s. 394.455(32)~~, without an involuntary placement proceeding as provided by law.

Section 69. Paragraph (a) of subsection (2) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review any records available to determine if the potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from


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receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;

3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred; or

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court or as provided in sub-sub-subparagraph b.(II), and as a result is prohibited by state or federal law from purchasing a firearm.

a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient services ~~placement~~ as defined in s. 394.4655, involuntary assessment and


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stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution; or

(II) Notwithstanding sub-sub-subparagraph (I), voluntary admission to a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under s. 394.463, where each of the following conditions have been met:

(A) An examining physician found that the person is an imminent danger to himself or herself or others.

(B) The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient services ~~treatment~~ would have been filed under s. 394.463(2)(g) ~~s. 394.463(2)(i)4.~~, or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment before ~~prior to~~ a court hearing on the petition.

(C) Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06 and the person acknowledged such notice in writing, in substantially the following form:

"I understand that the doctor who examined me believes I am a danger to myself or to others. I understand


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that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

(D) A judge or a magistrate has, pursuant to sub-sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.

c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

(I) Except as provided in sub-sub-subparagraph (II), clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias


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or former name, the sex, and the date of birth of the subject.

(II) For persons committed to a mental institution pursuant to sub-sub-subparagraph b.(II), within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgment must be filed by the administrator of the receiving or treatment facility, as defined in s. 394.455, with the clerk of the court for the county in which the involuntary examination under s. 394.463 occurred. No fee shall be charged for the filing under this sub-sub-subparagraph. The clerk must present the records to a judge or magistrate within 24 hours after receipt of the records. A judge or magistrate is required and has the lawful authority to review the records ex parte and, if the judge or magistrate determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, to order that the record be submitted to the department. If a judge or magistrate orders the submittal of the record to the department, the record must be submitted to the department within 24 hours.

d. A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in this paragraph, may petition the circuit court that made the adjudication or commitment, or the court that ordered that the record be submitted to the department pursuant to sub-sub-subparagraph c.(II), for relief from the firearm disabilities imposed by such adjudication or commitment. A copy of the petition shall be served on the state attorney for the county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the

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relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability granted under this sub-subparagraph has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.

e. Upon receipt of proper notice of relief from firearm disabilities granted under sub-subparagraph d., the department


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shall delete any mental health record of the person granted relief from the automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

f. The department is authorized to disclose data collected pursuant to this subparagraph to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose this data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license pursuant to s. 790.06(10). When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether the potential buyer or transferee is the same person as the subject of the record. Photographs and any other data that could confirm or negate identity must be made available to the department for such purposes, notwithstanding any other provision of state law to the contrary. Any such information that is made confidential or exempt from disclosure by law shall retain such confidential or exempt status when transferred to the department.

Section 70. This act shall take effect July 1, 2016.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

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Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 29.004, F.S.; including services provided to treatment-based mental health programs within case management funded from state revenues as an element of the state courts system; amending s. 39.001, F.S.; providing legislative intent regarding mental illness for purposes of the child welfare system; amending s. 39.407, F.S.; requiring assessment findings to be provided to the plan that is financially responsible for a child's care in residential treatment under certain circumstances; amending s. 39.507, F.S.; providing for consideration of mental health issues and involvement in treatment-based mental health programs in adjudicatory hearings and orders; providing requirements for certain court orders; amending s. 39.521, F.S.; providing for consideration of mental health issues and involvement in treatment-based mental health programs in disposition hearings; providing requirements for certain court orders; amending s. 394.455, F.S.; defining terms; revising definitions; amending s. 394.4573, F.S.; requiring the Department of Children and Families to submit a certain assessment to the Governor and the Legislature by a specified date; redefining terms; providing essential elements of a coordinated system of care; providing requirements for the department's annual

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assessment; authorizing the department to award certain grants; deleting duties and measures of the department regarding continuity of care management systems; amending s. 394.4597, F.S.; revising the prioritization of health care surrogates to be selected for involuntary patients; specifying certain persons who are prohibited from being selected as an individual's representative; amending s. 394.4598, F.S.; specifying certain persons who are prohibited from being appointed as a person's guardian advocate; amending s. 394.462, F.S.; requiring that counties develop and implement transportation plans; providing requirements for the plans; revising requirements for transportation to receiving facilities and treatment facilities; deleting exceptions to such requirements; amending s. 394.463, F.S.; authorizing county or circuit courts to enter ex parte orders for involuntary examinations; requiring a facility to provide copies of ex parte orders, reports, and certifications to managing entities and the department, rather than the Agency for Health Care Administration; requiring the managing entity and department to receive certain orders, certificates, and reports; requiring the managing entity and the department to receive and maintain copies of certain documents; prohibiting a person from being held for involuntary examination for more than a specified period of time; providing exceptions; requiring certain individuals to be released to law enforcement


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custody; providing exceptions; amending s. 394.4655, F.S.; providing for involuntary outpatient services; requiring a service provider to document certain inquiries; requiring the managing entity to document certain efforts; providing requirements for the appointment of state counsel; making technical changes; amending s. 394.467, F.S.; revising criteria for involuntary inpatient placement; requiring a facility filing a petition for involuntary inpatient placement to send a copy to the department and managing entity; providing requirements for the appointment of state counsel; revising criteria for a hearing on involuntary inpatient placement; revising criteria for a procedure for continued involuntary inpatient services; specifying requirements for a certain waiver of the patient's attendance at a hearing; requiring the court to consider certain testimony and evidence regarding a patient's incompetence; amending s. 394.46715, F.S.; revising rulemaking authority of the department; amending s. 394.656, F.S.; revising the membership of the Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee; providing duties for the committee; authorizing a not-for-profit community provider or managing entity to apply for certain grants; revising eligibility for such grants; defining a term; creating s. 394.761, F.S.; authorizing the agency and the department to develop a plan for revenue maximization; requiring the plan to be


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submitted to the Legislature by a certain date; amending s. 394.875, F.S.; requiring the department to modify licensure rules and procedures to create an option for a single, consolidated license for certain providers by a specified date; amending s. 394.9082, F.S.; providing a purpose for behavioral health managing entities; revising definitions; providing duties of the department; requiring the department to revise its contracts with managing entities; providing duties for managing entities; deleting provisions relating to legislative findings and intent, service delivery strategies, essential elements, reporting requirements, and rulemaking authority; amending s. 397.311, F.S.; defining the terms "informed consent" and "involuntary services"; revising the definition of the term "qualified professional"; conforming a cross-reference; amending s. 397.675, F.S.; revising the criteria for involuntary admissions due to substance abuse or co-occurring mental health disorders; amending s. 397.679, F.S.; specifying the licensed professionals who may complete a certificate for the involuntary admission of an individual; amending s. 397.6791, F.S.; providing a list of professionals authorized to initiate a certificate for an emergency assessment or admission of a person with a substance abuse disorder; amending s. 397.6793, F.S.; revising the criteria for initiation of a certificate for an emergency admission for a person who is substance abuse impaired; amending s. 397.6795, F.S.; revising

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the list of persons who may deliver a person for an emergency assessment; amending s. 397.681, F.S.; prohibiting the court from charging a fee for involuntary petitions; amending s. 397.6811, F.S.; revising the list of persons who may file a petition for an involuntary assessment and stabilization; amending s. 397.6814, F.S.; prohibiting a fee from being charged for the filing of a petition for involuntary assessment and stabilization; amending s. 397.6819, F.S.; revising the responsibilities of service providers who admit an individual for an involuntary assessment and stabilization; requiring a managing entity to be notified of certain recommendations; amending s. 397.695, F.S.; authorizing certain persons to file a petition for involuntary outpatient services of an individual; providing procedures and requirements for such petitions; amending s. 397.6951, F.S.; requiring that certain additional information be included in a petition for involuntary outpatient services; amending s. 397.6955, F.S.; requiring a court to fulfill certain additional duties upon the filing of a petition for involuntary outpatient services; amending s. 397.6957, F.S.; providing additional requirements for a hearing on a petition for involuntary outpatient services; amending s. 397.697, F.S.; authorizing a court to make a determination of involuntary outpatient services; authorizing a court to order a respondent to undergo treatment through a privately

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funded licensed service provider under certain circumstances; prohibiting a court from ordering involuntary outpatient services under certain circumstances; requiring the service provider to document certain inquiries; requiring the managing entity to document certain efforts; requiring a copy of the court's order to be sent to the department and managing entity; providing procedures for modifications to such orders; amending s. 397.6971, F.S.; establishing the requirements for an early release from involuntary outpatient services; amending s. 397.6975, F.S.; requiring the court to appoint certain counsel; providing requirements for hearings on petitions for continued involuntary outpatient services; requiring notice of such hearings; amending s. 397.6977, F.S.; conforming provisions to changes made by the act; creating s. 397.6978, F.S.; providing for the appointment of guardian advocates if an individual is found incompetent to consent to treatment; providing a list of persons prohibited from being appointed as an individual's guardian advocate; providing requirements for a facility requesting the appointment of a guardian advocate; requiring a training course for guardian advocates; providing requirements for the training course; providing requirements for the prioritization of individuals to be selected as guardian advocates; authorizing certain guardian advocates to consent to medical treatment; providing exceptions; providing procedures for the


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discharge of a guardian advocate; amending s. 409.967, F.S.; requiring managed care plans to provide for quality care; amending s. 409.973, F.S.; providing an integrated behavioral health initiative; amending s. 491.0045, F.S.; revising registration requirements for interns; repealing s. 394.4674, F.S., relating to the comprehensive plan and report on the deinstitutionalization of patients in a treatment facility; repealing s. 394.4985, F.S., relating to the implementation of a districtwide information and referral network; repealing s. 394.745, F.S., relating to the annual report on the compliance of providers under contract with the department; repealing s. 397.331, F.S., relating to definitions and legislative intent; repealing part IX of chapter 397, consisting of ss. 397.801, 397.811, and 397.821, F.S., relating to substance abuse impairment services coordination; repealing s. 397.901, F.S., relating to prototype juvenile addictions receiving facilities; repealing s. 397.93, F.S., relating to target populations for children’s substance abuse services; repealing s. 397.94, F.S., relating to the information and referral network for children’s substance abuse services; repealing s. 397.951, F.S., relating to substance abuse treatment and sanctions; repealing s. 397.97, F.S., relating to demonstration models for children’s substance abuse services; repealing s. 397.98, F.S., relating to utilization management for children’s substance abuse services; amending ss. 39.407,


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212.055, 394.4599, 394.495, 394.496, 394.9085, 397.321, 397.405, 397.407, 397.416, 397.4871, 409.966, 409.972, 440.102, 744.704, and 790.065, F.S.; conforming cross-references; providing an effective date.


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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 29.004, F.S.; including services provided to treatment-based mental health programs within case management funded from state revenues as an element of the state courts system; amending s. 39.001, F.S.; providing legislative intent regarding mental illness for purposes of the child welfare system; amending s. 39.507, F.S.; providing for consideration of mental health issues and involvement in treatment-based mental health programs in adjudicatory hearings and orders; amending s. 39.521, F.S.; providing for consideration of mental health issues and involvement in treatment-based mental health programs in disposition hearings; amending s. 394.455, F.S.; defining terms; revising definitions; amending s. 394.4573, F.S.; requiring the Department of Children and Families to submit a certain assessment to the Governor and the Legislature by a specified date; redefining terms; providing essential elements of a coordinated system of care; providing requirements for the department's annual assessment; authorizing the department to award certain grants; deleting duties and measures of the department regarding continuity of care management systems; amending s. 394.4597, F.S.; revising the prioritization of health care surrogates to be selected for involuntary patients; specifying


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certain persons who are prohibited from being selected as an individual's representative; amending s. 394.4598, F.S.; specifying certain persons who are prohibited from being appointed as a person's guardian advocate; amending s. 394.462, F.S.; requiring that counties develop and implement transportation plans; providing requirements for the plans; revising requirements for transportation to a receiving facility and treatment facility; deleting exceptions to such requirements; amending s. 394.463, F.S.; authorizing county or circuit courts to enter ex parte orders for involuntary examinations; requiring a facility to provide copies of ex parte orders, reports, and certifications to managing entities and the department, rather than the Agency for Health Care Administration; requiring the managing entity and department to receive certain orders, certificates, and reports; requiring the department to provide such documents to the Agency for Health Care Administration; requiring certain individuals to be released to law enforcement custody; providing exceptions; amending s. 394.4655, F.S.; providing for involuntary outpatient services; requiring a service provider to document certain inquiries; requiring the managing entity to document certain efforts; making technical changes; amending s. 394.467, F.S.; revising criteria for involuntary inpatient placement; requiring a facility filing a petition for involuntary inpatient placement to send a copy to the department

and managing entity; revising criteria for a hearing on involuntary inpatient placement; revising criteria for a procedure for continued involuntary inpatient services; specifying requirements for a certain waiver of the patient's attendance at a hearing; requiring the court to consider certain testimony and evidence regarding a patient's incompetence; amending s. 394.46715, F.S.; revising rulemaking authority of the department; creating s. 394.761, F.S.; authorizing the agency and the department to develop a plan for revenue maximization; requiring the plan to be submitted to the Legislature by a certain date; amending s. 394.875, F.S.; requiring the department to modify licensure rules and procedures to create an option for a single, consolidated license for certain providers by a specified date; amending s. 394.9082, F.S.; providing a purpose for behavioral health managing entities; revising definitions; providing duties of the department; requiring the department to revise its contracts with managing entities; providing duties for managing entities; deleting provisions relating to legislative findings and intent, service delivery strategies, essential elements, reporting requirements, and rulemaking authority; amending s. 397.311, F.S.; defining the term "involuntary services"; revising the definition of the term "qualified professional"; conforming a cross-reference; amending s. 397.675, F.S.; revising the criteria for involuntary admissions due to substance

abuse or co-occurring mental health disorders; amending s. 397.679, F.S.; specifying the licensed professionals who may complete a certificate for the involuntary admission of an individual; amending s. 397.6791, F.S.; providing a list of professionals authorized to initiate a certificate for an emergency assessment or admission of a person with a substance abuse disorder; amending s. 397.6793, F.S.; revising the criteria for initiation of a certificate for an emergency admission for a person who is substance abuse impaired; amending s. 397.6795, F.S.; revising the list of persons who may deliver a person for an emergency assessment; amending s. 397.681, F.S.; prohibiting the court from charging a fee for involuntary petitions; amending s. 397.6811, F.S.; revising the list of persons who may file a petition for an involuntary assessment and stabilization; amending s. 397.6814, F.S.; prohibiting a fee from being charged for the filing of a petition for involuntary assessment and stabilization; amending s. 397.6819, F.S.; revising the responsibilities of service providers who admit an individual for an involuntary assessment and stabilization; amending s. 397.695, F.S.; authorizing certain persons to file a petition for involuntary outpatient services of an individual; providing procedures and requirements for such petitions; amending s. 397.6951, F.S.; requiring that certain additional information be included in a petition for involuntary outpatient services; amending

s. 397.6955, F.S.; requiring a court to fulfill certain additional duties upon the filing of petition for involuntary outpatient services; amending s. 397.6957, F.S.; providing additional requirements for a hearing on a petition for involuntary outpatient services; amending s. 397.697, F.S.; authorizing a court to make a determination of involuntary outpatient services; prohibiting a court from ordering involuntary outpatient services under certain circumstances; requiring the service provider to document certain inquiries; requiring the managing entity to document certain efforts; requiring a copy of the court's order to be sent to the department and managing entity; providing procedures for modifications to such orders; amending s. 397.6971, F.S.; establishing the requirements for an early release from involuntary outpatient services; amending s. 397.6975, F.S.; requiring the court to appoint certain counsel; providing requirements for hearings on petitions for continued involuntary outpatient services; requiring notice of such hearings; amending s. 397.6977, F.S.; conforming provisions to changes made by the act; creating s. 397.6978, F.S.; providing for the appointment of guardian advocates if an individual is found incompetent to consent to treatment; providing a list of persons prohibited from being appointed as an individual's guardian advocate; providing requirements for a facility requesting the appointment of a guardian advocate; requiring a

training course for guardian advocates; providing requirements for the training course; providing requirements for the prioritization of individuals to be selected as guardian advocates; authorizing certain guardian advocates to consent to medical treatment; providing exceptions; providing procedures for the discharge of a guardian advocate; amending ss. 39.407, 212.055, 394.4599, 394.495, 394.496, 394.9085, 397.405, 397.407, 397.416, 409.972, 440.102, 744.704, and 790.065, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (10) of section 29.004, Florida Statutes, to read:

29.004 State courts system.—For purposes of implementing s. 14, Art. V of the State Constitution, the elements of the state courts system to be provided from state revenues appropriated by general law are as follows:

(10) Case management. Case management includes:

(e) Service referral, coordination, monitoring, and tracking for mental health programs under chapter 394.

Case management may not include costs associated with the application of therapeutic jurisprudence principles by the courts. Case management also may not include case intake and records management conducted by the clerk of court.

Section 2. Subsection (6) of section 39.001, Florida

Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(6) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.—

(a) The Legislature recognizes that early referral and comprehensive treatment can help combat mental illness and substance abuse disorders in families and that treatment is cost-effective.

(b) The Legislature establishes the following goals for the state related to mental illness and substance abuse treatment services in the dependency process:

1. To ensure the safety of children.

2. To prevent and remediate the consequences of mental illness and substance abuse disorders on families involved in protective supervision or foster care and reduce the occurrences of mental illness and substance abuse disorders, including alcohol abuse or other related disorders, for families who are at risk of being involved in protective supervision or foster care.

3. To expedite permanency for children and reunify healthy, intact families, when appropriate.

4. To support families in recovery.

(c) The Legislature finds that children in the care of the state's dependency system need appropriate health care services, that the impact of mental illnesses and substance abuse on health indicates the need for health care services to include treatment for mental health and substance abuse disorders for ~~services to~~ children and parents where appropriate, and that it is in the state's best interest that such children be provided

the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's dependency system must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related mental illness and substance abuse problems.

(d) It is the intent of the Legislature to encourage the use of the mental health programs established under chapter 394 and the drug court program model established under ~~by~~ s. 397.334 and authorize courts to assess children and persons who have custody or are requesting custody of children where good cause is shown to identify and address mental illnesses and substance abuse disorders ~~problems~~ as the court deems appropriate at every stage of the dependency process. Participation in treatment, including a treatment-based mental health court program or a treatment-based drug court program, may be required by the court following adjudication. Participation in assessment and treatment before ~~prior to~~ adjudication is ~~shall be~~ voluntary, except as provided in s. 39.407(16).

(e) It is therefore the purpose of the Legislature to provide authority for the state to contract with mental health service providers and community substance abuse treatment providers for the development and operation of specialized support and overlay services for the dependency system, which will be fully implemented and used as resources permit.

(f) Participation in a treatment-based mental health court program or a ~~the~~ treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult, but is intended to enable these agencies to

better meet their needs through shared responsibility and resources.

Section 3. Subsection (10) of section 39.507, Florida Statutes, is amended to read:

39.507 Adjudicatory hearings; orders of adjudication.—

(10) After an adjudication of dependency, or a finding of dependency where adjudication is withheld, the court may order a person who has custody or is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health program established under chapter 394 or a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including a treatment-based mental health court program or a ~~the~~ treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subsection may be made only upon good cause shown. This subsection does not authorize placement of a child with a person seeking custody, other than the parent or legal custodian, who requires mental

health or substance abuse disorder treatment.

Section 4. Paragraph (b) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(b) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental illness or substance abuse disorder assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health program established under chapter 394 or a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including a treatment-based mental health court program or a ~~the~~

treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must ~~shall~~ set forth

the powers of the custodian of the child and ~~shall~~ include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, ~~no~~ further judicial reviews are not required if~~, so long as~~ permanency has been established for the child.

Section 5. Section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, ~~unless the context clearly requires otherwise,~~ the term:

(1) "Access center" means a facility staffed by medical, behavioral, and substance abuse professionals which provides emergency screening and evaluation for mental health or substance abuse disorders and may provide transportation to an appropriate facility if an individual is in need of more intensive services.

(2) "Addictions receiving facility" means a secure, acute care facility that, at a minimum, provides emergency screening, evaluation, and short-term stabilization services; is operated 24 hours per day, 7 days per week; and is designated by the department to serve individuals found to have substance abuse impairment who qualify for services under this part.

(3)~~(1)~~ "Administrator" means the chief administrative officer of a receiving or treatment facility or his or her designee.

(4) "Adult" means an individual who is 18 years of age or older or who has had the disability of nonage removed under chapter 743.

(5) "Advanced registered nurse practitioner" means any

person licensed in this state to practice professional nursing who is certified in advanced or specialized nursing practice under s. 464.012.

(6)~~(2)~~ "Clinical psychologist" means a psychologist as defined in s. 490.003(7) with 3 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 under this part.

(7)~~(3)~~ "Clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by ~~a~~ facility staff which pertains to the patient's hospitalization or treatment.

(8)~~(4)~~ "Clinical social worker" means a person licensed as a clinical social worker under s. 491.005 or s. 491.006 ~~chapter 491~~.

(9)~~(5)~~ "Community facility" means a ~~any~~ community service provider that contracts ~~contracting~~ with the department to furnish substance abuse or mental health services under part IV of this chapter.

(10)~~(6)~~ "Community mental health center or clinic" means a publicly funded, not-for-profit center that ~~which~~ contracts with the department for the provision of inpatient, outpatient, day treatment, or emergency services.

(11)~~(7)~~ "Court," unless otherwise specified, means the circuit court.

(12)~~(8)~~ "Department" means the Department of Children and

Families.

(13) "Designated receiving facility" means a facility approved by the department which may be a crisis stabilization unit, addictions receiving facility and provides, at a minimum, emergency screening, evaluation, and short-term stabilization for mental health or substance abuse disorders, and which may have an agreement with a corresponding facility for transportation and services.

(14) "Detoxification facility" means a facility licensed to provide detoxification services under chapter 397.

(15) "Electronic means" is a form of telecommunication which requires all parties to maintain visual as well as audio communication.

(16)~~(9)~~ "Express and informed consent" means consent voluntarily given in writing, by a competent person, after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(17)~~(10)~~ "Facility" means any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have ~~a mental illness~~ or who have been diagnosed as having a mental illness or substance abuse impairment. The term ~~"Facility"~~ does not include a ~~any~~ program or an entity licensed under ~~pursuant to~~ chapter 400 or chapter 429.

(18) "Governmental facility" means a facility owned, operated, or administered by the Department of Corrections or


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the United States Department of Veterans Affairs.

(19) ~~(11)~~ "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated.

(20) ~~(12)~~ "Guardian advocate" means a person appointed by a court to make decisions regarding mental health or substance abuse treatment on behalf of a patient who has been found incompetent to consent to treatment pursuant to this part. ~~The guardian advocate may be granted specific additional powers by written order of the court, as provided in this part.~~

(21) ~~(13)~~ "Hospital" means a hospital ~~facility as defined in s. 395.002 and~~ licensed under chapter 395 and part II of chapter 408.

(22) ~~(14)~~ "Incapacitated" means that a person has been adjudicated incapacitated pursuant to part V of chapter 744 and a guardian of the person has been appointed.

(23) ~~(15)~~ "Incompetent to consent to treatment" means a state in which ~~that~~ a person's judgment is so affected by a ~~his or her~~ mental illness, a substance abuse impairment, that he or she ~~the person~~ lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical, ~~or~~ mental health, or substance abuse treatment.

(24) "Involuntary examination" means an examination performed under s. 394.463 or s. 397.675 to determine whether a person qualifies for involuntary outpatient services pursuant to s. 394.4655 or involuntary inpatient placement.

(25) "Involuntary services" means court-ordered outpatient services or inpatient placement for mental health treatment


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pursuant to s. 394.4655 or s. 394.467.

(26) ~~(16)~~ "Law enforcement officer" has the same meaning as provided ~~means a law enforcement officer as defined~~ in s. 943.10.

(27) "Marriage and family therapist" means a person licensed to practice marriage and family therapy under s. 491.005 or s. 491.006.

(28) "Mental health counselor" means a person licensed to practice mental health counseling under s. 491.005 or s. 491.006.

(29) ~~(17)~~ "Mental health overlay program" means a mobile service that ~~which~~ provides an independent examination for voluntary admission ~~admissions~~ and a range of supplemental onsite services to persons with a mental illness in a residential setting such as a nursing home, an assisted living facility, or an adult family-care home~~,~~ or a nonresidential setting such as an adult day care center. Independent examinations provided ~~pursuant to this part~~ through a mental health overlay program must only be provided under contract with the department ~~for this service~~ or be attached to a public receiving facility that is also a community mental health center.

(30) ~~(18)~~ "Mental illness" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. For the purposes of this part, the term does not include a developmental disability as defined in chapter 393, intoxication, or

conditions manifested only by antisocial behavior or substance abuse impairment.

(31) "Minor" means an individual who is 17 years of age or younger and who has not had the disability of nonage removed pursuant to s. 743.01 or s. 743.015.

(32) ~~(19)~~ "Mobile crisis response service" means a nonresidential crisis service ~~attached to a public receiving facility and~~ available 24 hours a day, 7 days a week, ~~through~~ which provides immediate intensive assessments and interventions, including screening for admission into a mental health receiving facility, an addictions receiving facility, or a detoxification facility, ~~take place~~ for the purpose of identifying appropriate treatment services.

(33) ~~(20)~~ "Patient" means any person who is held or accepted for mental health or substance abuse treatment.

(34) ~~(21)~~ "Physician" means a medical practitioner licensed under chapter 458 or chapter 459 ~~who has experience in the diagnosis and treatment of mental and nervous disorders~~ or a physician employed by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense ~~which qualifies as a receiving or treatment facility under this part~~.

(35) "Physician assistant" means a person licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental disorders.

(36) ~~(22)~~ "Private facility" means any hospital or facility operated by a for-profit or not-for-profit corporation or association which ~~that~~ provides mental health or substance abuse services and is not a public facility.

(37) ~~(23)~~ "Psychiatric nurse" means an advanced registered nurse practitioner certified under s. 464.012 who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician.

(38) ~~(24)~~ "Psychiatrist" means a medical practitioner licensed under chapter 458 or chapter 459 ~~who has primarily diagnosed and treated mental and nervous disorders~~ for at least ~~a period of not less than~~ 3 years, inclusive of psychiatric residency.

(39) ~~(25)~~ "Public facility" means a ~~any~~ facility that has contracted with the department to provide mental health or substance abuse services to all persons, regardless of ~~their~~ ability to pay, and is receiving state funds for such purpose.

(40) "Qualified professional" means a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490.003(7) or chapter 491; a psychiatrist licensed under chapter 458 or chapter 459; or a psychiatric nurse as defined in subsection (37).

(41) ~~(26)~~ "Receiving facility" means any public or private facility designated by the department to receive and hold or refer, as appropriate, involuntary patients under emergency conditions ~~or~~ for mental health or substance abuse ~~psychiatric~~ evaluation and to provide ~~short-term~~ treatment or transportation to the appropriate service provider. The term does not include a county jail.

(42) ~~(27)~~ "Representative" means a person selected to receive notice of proceedings during the time a patient is held

in or admitted to a receiving or treatment facility.

(43)~~(28)(a)~~ "Restraint" means: ~~a physical device, method, or drug used to control behavior.~~

(a) A physical restraint, including ~~is~~ any manual method or physical or mechanical device, material, or equipment attached or adjacent to an ~~the~~ individual's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body. Physical restraint includes the physical holding of a person during a procedure to forcibly administer psychotropic medication. Physical restraint does not include physical devices such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests or for purposes of orthopedic, surgical, or other similar medical treatment, when used to provide support for the achievement of functional body position or proper balance, or when used to protect a person from falling out of bed.

(b) A drug or ~~used as a restraint is a~~ medication used to control a ~~the~~ person's behavior or to restrict his or her freedom of movement which ~~and~~ is not part of the standard treatment regimen of a person with a diagnosed mental illness ~~who is a client of the department. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint~~.

~~(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; or for~~

~~purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.~~

(44) "School psychologist" has the same meaning as in s. 490.003.

(45)~~(29)~~ "Seclusion" means the physical segregation ~~of a person in any fashion~~ or involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this part ~~chapter~~, the term does not mean isolation due to a person's medical condition or symptoms.

(46)~~(30)~~ "Secretary" means the Secretary of Children and Families.

(47) "Service provider" means a receiving facility, any facility licensed under chapter 397, a treatment facility, an entity under contract with the department to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced registered nurse practitioner, a psychiatric nurse, or a qualified professional as defined in this section.

(48) "Substance abuse impairment" means a condition involving the use of alcoholic beverages or any psychoactive or mood-altering substance in such a manner that a person has lost the power of self-control and has inflicted or is likely to

inflict physical harm on himself or herself or others.

(49)~~(31)~~ "Transfer evaluation" means the process by which~~,~~ ~~as approved by the appropriate district office of the department, whereby~~ a person who is being considered for placement in a state treatment facility is ~~first~~ evaluated for appropriateness of admission to a state treatment ~~the~~ facility ~~by a community-based public receiving facility or by a community mental health center or clinic if the public receiving facility is not a community mental health center or clinic~~.

(50)~~(32)~~ "Treatment facility" means a ~~any~~ state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the department when rendering such services to a person pursuant to the provisions of this part. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.

(51) "Triage center" means a facility that is approved by the department and has medical, behavioral, and substance abuse professionals present or on call to provide emergency screening and evaluation of individuals transported to the center by a law enforcement officer.

~~(33) "Service provider" means any public or private receiving facility, an entity under contract with the Department of Children and Families to provide mental health services, a clinical psychologist, a clinical social worker, a marriage and~~

~~family therapist, a mental health counselor, a physician, a psychiatric nurse as defined in subsection (23), or a community mental health center or clinic as defined in this part.~~

~~(34) "Involuntary examination" means an examination performed under s. 394.463 to determine if an individual qualifies for involuntary inpatient treatment under s. 394.467(1) or involuntary outpatient treatment under s. 394.4655(1).~~

~~(35) "Involuntary placement" means either involuntary outpatient treatment pursuant to s. 394.4655 or involuntary inpatient treatment pursuant to s. 394.467.~~

~~(36) "Marriage and family therapist" means a person licensed as a marriage and family therapist under chapter 491.~~

~~(37) "Mental health counselor" means a person licensed as a mental health counselor under chapter 491.~~

~~(38) "Electronic means" means a form of telecommunication that requires all parties to maintain visual as well as audio communication.~~

Section 6. Section 394.4573, Florida Statutes, is amended to read:

394.4573 Coordinated system of care; annual assessment; essential elements ~~Continuity of care management system~~; measures of performance; system improvement grants; reports.—On or before October 1 of each year, the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an assessment of the behavioral health services in this state in the context of the No-Wrong-Door model and standards set forth in this section. The department's assessment shall be based on both quantitative and


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637 qualitative data and must identify any significant regional
638 variations. The assessment must include information gathered
639 from managing entities, service providers, law enforcement,
640 judicial officials, local governments, behavioral health
641 consumers and their family members, and the public.
642 (1) As used in ~~For the purposes of~~ this section:
643 (a) "Case management" means those direct services provided
644 to a client in order to assess his or her ~~activities aimed at~~
645 ~~assessing client~~ needs, plan or arrange ~~planning~~ services,
646 coordinate service providers, monitor ~~linking the service system~~
647 ~~to a client, coordinating the various system components,~~
648 ~~monitoring~~ service delivery, and evaluate patient outcomes
649 ~~evaluating the effect of service delivery~~.
650 (b) "Case manager" means an individual who works with
651 clients~~,~~ and their families and significant others~~,~~ to provide
652 case management.
653 (c) "Client manager" means an employee of the managing
654 entity or entity under contract with the managing entity
655 ~~department~~ who is assigned to specific provider agencies and
656 geographic areas to ensure that the full range of needed
657 services is available to clients.
658 (d) "Coordinated system ~~Continuity~~ of care ~~management~~
659 ~~system~~" means ~~a system that assures, within available resources,~~
660 ~~that clients have access to~~ the full array of behavioral and
661 related services in a region or community offered by all service
662 providers, whether participating under contract with the
663 managing entity or another method of community partnership or
664 mutual agreement ~~within the mental health services delivery~~
665 ~~system~~.


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666 (e) "No-Wrong-Door model" means a model for the delivery of
667 health care services to persons who have mental health or
668 substance abuse disorders, or both, which optimizes access to
669 care, regardless of the entry point to the behavioral health
670 care system.
671 (2) The essential elements of a coordinated system of care
672 include:
673 (a) Community interventions, such as prevention, primary
674 care for behavioral health needs, therapeutic and supportive
675 services, crisis response services, and diversion programs.
676 (b) A designated receiving system consisting of one or more
677 facilities serving a defined geographic area and responsible for
678 assessment and evaluation, both voluntary and involuntary, and
679 treatment or triage for patients who present with mental
680 illness, substance abuse disorder, or co-occurring disorders.
681 The system must be approved by each county or by several
682 counties, planned through an inclusive process, approved by the
683 managing entity, and documented through written memoranda of
684 agreement or other binding arrangements. The designated
685 receiving system may be organized in any of the following ways
686 so long as it functions as a No-Wrong-Door model that responds
687 to individual needs and integrates services among various
688 providers:
689 1. A central receiving system, which consists of a
690 designated central receiving facility that serves as a single
691 entry point for persons with mental health or substance abuse
692 disorders, or both. The designated receiving facility must be
693 capable of assessment, evaluation, and triage or treatment for
694 various conditions and circumstances.

2. A coordinated receiving system, which consists of multiple entry points that are linked by shared data systems, formal referral agreements, and cooperative arrangements for care coordination and case management. Each entry point must be a designated receiving facility and must provide or arrange for necessary services following an initial assessment and evaluation.

3. A tiered receiving system, which consists of multiple entry points, some of which offer only specialized or limited services. Each service provider must be classified according to its capabilities as either a designated receiving facility, or another type of service provider such as a triage center, or an access center. All participating service providers must be linked by methods to share data that are compliant with both state and federal patient privacy laws, formal referral agreements, and cooperative arrangements for care coordination and case management. An accurate inventory of the participating service providers which specifies the capabilities and limitations of each provider must be maintained and made available at all times to all first responders in the service area.

(c) Transportation in accordance with a plan developed under s. 394.462.

(d) Crisis services, including mobile response teams, crisis stabilization units, addiction receiving facilities, and detoxification facilities.

(e) Case management, including intensive case management for individuals determined to be high-need or high-utilization individuals under s. 394.9082(2(e).

(f) Outpatient services.

(g) Residential services.

(h) Hospital inpatient care.

(i) Aftercare and other post-discharge services.

(j) Medication Assisted Treatment and medication management.

(k) Recovery support, including housing assistance and support for competitive employment, educational attainment, independent living skills development, family support and education, and wellness management and self-care.

(3) The department's annual assessment must compare the status and performance of the extant behavioral health system with the following standards and any other standards or measures that the department determines to be applicable.

(a) The capacity of the contracted service providers to meet estimated need when such estimates are based on credible evidence and sound methodologies.

(b) The extent to which the behavioral health system uses evidence-informed practices and broadly disseminates the results of quality improvement activities to all service providers.

(c) The degree to which services are offered in the least restrictive and most appropriate therapeutic environment.

(d) The scope of systemwide accountability activities used to monitor patient outcomes and measure continuous improvement in the behavioral health system.

(4) Subject to a specific appropriation by the Legislature, the department may award system improvement grants to managing entities based on the submission of a detailed plan to enhance services, coordination, or performance measurement in accordance


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with the model and standards specified in this section. Such a grant must be awarded through a performance-based contract that links payments to the documented and measurable achievement of system improvements ~~The department is directed to implement a continuity of care management system for the provision of mental health care, through the provision of client and case management, including clients referred from state treatment facilities to community mental health facilities. Such system shall include a network of client managers and case managers throughout the state designed to:~~

~~(a) Reduce the possibility of a client's admission or readmission to a state treatment facility.~~

~~(b) Provide for the creation or designation of an agency in each county to provide single intake services for each person seeking mental health services. Such agency shall provide information and referral services necessary to ensure that clients receive the most appropriate and least restrictive form of care, based on the individual needs of the person seeking treatment. Such agency shall have a single telephone number, operating 24 hours per day, 7 days per week, where practicable, at a central location, where each client will have a central record.~~

~~(c) Advocate on behalf of the client to ensure that all appropriate services are afforded to the client in a timely and dignified manner.~~

~~(d) Require that any public receiving facility initiating a patient transfer to a licensed hospital for acute care mental health services not accessible through the public receiving facility shall notify the hospital of such transfer and send all~~


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~~records relating to the emergency psychiatric or medical condition.~~

~~(3) The department is directed to develop and include in contracts with service providers measures of performance with regard to goals and objectives as specified in the state plan. Such measures shall use, to the extent practical, existing data collection methods and reports and shall not require, as a result of this subsection, additional reports on the part of service providers. The department shall plan monitoring visits of community mental health facilities with other state, federal, and local governmental and private agencies charged with monitoring such facilities.~~

Section 7. Paragraphs (d) and (e) of subsection (2) of section 394.4597, Florida Statutes, are amended to read:

394.4597 Persons to be notified; patient's representative.—

(2) INVOLUNTARY PATIENTS.—

(d) When the receiving or treatment facility selects a representative, first preference shall be given to a health care surrogate, if one has been previously selected by the patient. If the patient has not previously selected a health care surrogate, the selection, except for good cause documented in the patient's clinical record, shall be made from the following list in the order of listing:

1. The patient's spouse.

2. An adult child of the patient.

3. A parent of the patient.

4. The adult next of kin of the patient.

5. An adult friend of the patient.

~~6. The appropriate Florida local advocacy council as~~

~~provided in s. 402.166.~~

(e) The following persons are prohibited from selection as a patient's representative:

1. A professional providing clinical services to the patient under this part.

2. The licensed professional who initiated the involuntary examination of the patient, if the examination was initiated by professional certificate.

3. An employee, an administrator, or a board member of the facility providing the examination of the patient.

4. An employee, an administrator, or a board member of a treatment facility providing treatment for the patient.

5. A person providing any substantial professional services to the patient, including clinical services.

6. A creditor of the patient.

7. A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of injunction is temporary or final, and for which the patient was the petitioner.

8. A person subject to an injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046, whether the order of injunction is temporary or final, and for which the patient was the petitioner ~~A licensed professional providing services to the patient under this part, an employee of a facility providing direct services to the patient under this part, a department employee, a person providing other substantial services to the patient in a professional or business capacity, or a creditor of the patient shall not be appointed as the patient's representative~~.

Section 8. Present subsections (2) through (7) of section 394.4598, Florida Statutes, are redesignated as subsections (3) through (8), respectively, a new subsection (2) is added to that section, and present subsections (3) and (4) of that section are amended, to read:

394.4598 Guardian advocate.—

(2) The following persons are prohibited from appointment as a patient's guardian advocate:

(a) A professional providing clinical services to the patient under this part.

(b) The licensed professional who initiated the involuntary examination of the patient, if the examination was initiated by professional certificate.

(c) An employee, an administrator, or a board member of the facility providing the examination of the patient.

(d) An employee, an administrator, or a board member of a treatment facility providing treatment of the patient.

(e) A person providing any substantial professional services to the patient, including clinical services.

(f) A creditor of the patient.

(g) A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of injunction is temporary or final, and for which the patient was the petitioner.

(h) A person subject to an injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046, whether the order of injunction is temporary or final, and for which the patient was the petitioner.

(4) ~~(3)~~ In lieu of the training required of guardians

appointed pursuant to chapter 744, ~~Prior to~~ a guardian advocate must, at a minimum, participate in a 4-hour training course approved by the court before exercising his or her authority~~, the guardian advocate shall attend a training course approved by the court~~. At a minimum, this training course~~, of not less than 4 hours,~~ must include~~, at minimum,~~ information about ~~the~~ patient rights, psychotropic medications, the diagnosis of mental illness, the ethics of medical decisionmaking, and duties of guardian advocates. ~~This training course shall take the place of the training required for guardians appointed pursuant to chapter 744.~~

(5)~~(4)~~ The required training course and the information to be supplied to prospective guardian advocates before ~~prior to~~ their appointment ~~and the training course for guardian advocates~~ must be developed ~~and completed through a course developed~~ by the department, ~~and~~ approved by the chief judge of the circuit court, and taught by a court-approved organization, which~~.~~ ~~Court-approved organizations~~ may include, but is ~~are~~ not limited to, a community college ~~community or junior colleges~~, a guardianship organization ~~guardianship organizations~~, a ~~and the~~ local bar association, or The Florida Bar. The training course may be web-based, provided in video format, or other electronic means but must be capable of ensuring the identity and participation of the prospective guardian advocate. The court may~~, in its discretion,~~ waive some or all of the training requirements for guardian advocates or impose additional requirements. The court shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian advocate, the duties

assigned to the guardian advocate, and the needs of the patient.

Section 9. Section 394.462, Florida Statutes, is amended to read:

394.462 Transportation.—A transportation plan must be developed and implemented by each county in accordance with this section. A county may enter into a memorandum of understanding with the governing boards of nearby counties to establish a shared transportation plan. When multiple counties enter into a memorandum of understanding for this purpose, the managing entity must be notified and provided a copy of the agreement. The transportation plan must describe methods of transport to a facility within the designated receiving system and may identify responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan must ensure that individuals who meet the criteria for involuntary assessment and evaluation pursuant to ss. 394.463 and 397.675 will be transported. The plan may rely on emergency medical transport services or private transport companies as appropriate.

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to an appropriate facility within the designated receiving system ~~the nearest receiving facility~~ for examination.

(b)1. The designated law enforcement agency may decline to transport the person to a receiving facility only if:

a.~~1.~~ The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and

b.~~2.~~ The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.

2.~~3.~~ The entity providing transportation ~~jurisdiction designated by the county~~ may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From a private or public third-party payor ~~an insurance company, health care corporation, or other source~~, if the person receiving the transportation has applicable coverage ~~is covered by an insurance policy or subscribes to a health care corporation or other source for payment of such expenses~~.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(c)~~(b)~~ A ~~Any~~ company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transport ~~transportation~~ of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with

respect to the transport ~~transportation~~ of patients.

(d)~~(c)~~ Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of ~~the~~ patients.

(e)~~(d)~~ When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(f)~~(e)~~ When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 or s. 397.675 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(g)~~(f)~~ When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under this part, the law enforcement officer shall transport the person to an appropriate ~~the nearest receiving~~ facility within the designated receiving system for examination.

(h)~~(g)~~ When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person must ~~shall~~ first be processed in the same manner as any other criminal suspect. The law

enforcement agency shall thereafter immediately notify the appropriate ~~nearest public receiving~~ facility within the designated receiving system, which shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide ~~mental health~~ examination and treatment to the person where he or she is held.

(i) ~~(h)~~ If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(j) ~~(i)~~ The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

(k) ~~(j)~~ The ~~nearest receiving~~ facility within the designated receiving system must accept, pursuant to this part, persons brought by law enforcement officers, an emergency medical transport service, or a private transport company for involuntary examination.

(l) ~~(k)~~ Each law enforcement agency designated pursuant to paragraph (a) shall establish a policy that ~~develop a memorandum of understanding with each receiving facility within the law enforcement agency's jurisdiction which~~ reflects a single set of protocols approved by the managing entity for the safe and

secure transportation ~~of the person~~ and transfer of custody of the person. ~~These protocols must also address crisis intervention measures.~~

(m) ~~(l)~~ When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to ~~receiving~~ facilities within the designated receiving system, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(n) ~~(m)~~ ~~Nothing in~~ This section may not ~~shall~~ be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with ~~the provisions of~~ s. 401.445.

(2) TRANSPORTATION TO A TREATMENT FACILITY.—

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting a voluntary or involuntary patient to a treatment facility, the transportation plan established by the governing board of the county or counties must specify how ~~in which~~ the hospitalized patient will be transported to, from, and between facilities in a ~~is hospitalized shall arrange for such required transportation and shall ensure the~~ safe and dignified manner ~~transportation of the patient~~. ~~The governing board of each county is authorized to contract with private transport companies for the transportation of such patients to and from a treatment facility.~~

(b) A ~~Any~~ company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport ~~transportation~~ of patients.

(c) A ~~Any~~ company that contracts with one or more counties ~~the governing board of a county~~ to transport patients in accordance with this section shall comply with the applicable rules of the department to ensure the safety and dignity of ~~the~~ patients.

(d) County or municipal law enforcement and correctional personnel and equipment may ~~shall~~ not be used to transport patients adjudicated incapacitated or found by the court to meet the criteria for involuntary placement pursuant to s. 394.467, except in small rural counties where there are no cost-efficient alternatives.

(3) TRANSFER OF CUSTODY.—Custody of a person who is transported pursuant to this part, along with related documentation, shall be relinquished to a responsible individual at the appropriate receiving or treatment facility.

~~(4) EXCEPTIONS.—An exception to the requirements of this section may be granted by the secretary of the department for the purposes of improving service coordination or better meeting the special needs of individuals. A proposal for an exception must be submitted by the district administrator after being approved by the governing boards of any affected counties, prior to submission to the secretary.~~

~~(a) A proposal for an exception must identify the specific~~

~~provision from which an exception is requested; describe how the proposal will be implemented by participating law enforcement agencies and transportation authorities; and provide a plan for the coordination of services such as case management.~~

~~(b) The exception may be granted only for:~~

~~1. An arrangement centralizing and improving the provision of services within a district, which may include an exception to the requirement for transportation to the nearest receiving facility;~~

~~2. An arrangement by which a facility may provide, in addition to required psychiatric services, an environment and services which are uniquely tailored to the needs of an identified group of persons with special needs, such as persons with hearing impairments or visual impairments, or elderly persons with physical frailties; or~~

~~3. A specialized transportation system that provides an efficient and humane method of transporting patients to receiving facilities, among receiving facilities, and to treatment facilities.~~

~~(c) Any exception approved pursuant to this subsection shall be reviewed and approved every 5 years by the secretary.~~

Section 10. Subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for

involuntary examination and specifying~~, giving~~ the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings~~, written or oral~~. If other, less restrictive, means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate ~~the nearest receiving~~ facility within the designated receiving system for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A ~~No~~ fee may not ~~shall~~ be charged for the filing of an order under this subsection. Any ~~receiving~~ facility accepting the patient based on this order must send a copy of the order to the managing entity in the region ~~Agency for Health Care Administration~~ on the next working day. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the appropriate facility ~~executed~~ or, ~~if not executed,~~ for the period specified in the order itself, whichever comes first. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the appropriate ~~nearest receiving~~ facility within the designated receiving system for examination. The officer shall execute a written report detailing the circumstances under which the

person was taken into custody, which must ~~and the report shall~~ be made a part of the patient's clinical record. Any ~~receiving~~ facility accepting the patient based on this report must send a copy of the report to the department and the managing entity ~~Agency for Health Care Administration~~ on the next working day.

3. A physician, clinical psychologist, psychiatric nurse practitioner, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other, less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, ~~such as voluntary appearance for outpatient evaluation,~~ a law enforcement officer shall take into custody the person named in the certificate ~~into custody~~ and deliver him or her to the appropriate ~~nearest receiving~~ facility within the designated receiving system for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any ~~receiving~~ facility accepting the patient based on this certificate must send a copy of the certificate to the managing entity ~~Agency for Health Care Administration on~~ the next working day. The document may be submitted electronically through existing data systems, if applicable.

(b) A person may ~~shall~~ not be removed from any program or residential placement licensed under chapter 400 or chapter 429

and transported to a receiving facility for involuntary examination unless an ex parte order, a professional certificate, or a law enforcement officer's report is first prepared. If the condition of the person is such that preparation of a law enforcement officer's report is not practicable before removal, the report shall be completed as soon as possible after removal, but in any case before the person is transported to a receiving facility. A ~~receiving~~ facility admitting a person for involuntary examination who is not accompanied by the required ex parte order, professional certificate, or law enforcement officer's report shall notify the managing entity ~~Agency for Health Care Administration~~ of such admission by certified mail or by e-mail, if available, by ~~no later than~~ the next working day. The provisions of this paragraph do not apply when transportation is provided by the patient's family or guardian.

(c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may serve and execute such order on any day of the week, at any time of the day or night.

(d) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order.

(e) The managing entity and the department ~~Agency for Health Care Administration~~ shall receive and maintain the copies of ex parte petitions and orders, involuntary outpatient

services ~~placement~~ orders issued pursuant to s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467, professional certificates, and law enforcement officers' reports. These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. These documents shall be provided by the department to the Agency for Health Care Administration and used by the agency to ~~The agency shall~~ prepare annual reports analyzing the data obtained from these documents, without information identifying patients, and shall provide copies of reports to the department, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(f) A patient shall be examined by a physician or~~,~~ a clinical psychologist, or by a psychiatric nurse practitioner, performing within the framework of an established protocol with a psychiatrist at a ~~receiving~~ facility without unnecessary delay to determine if the criteria for involuntary services are met. Emergency treatment may be provided ~~and may,~~ upon the order of a physician, if the physician determines ~~be given emergency treatment if it is determined~~ that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist or a clinical psychologist or, ~~if the receiving facility is owned or operated by a hospital or health system, the release may also be approved by~~ a psychiatric nurse practitioner performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis

and treatment of mental illness ~~and nervous disorders and~~ after completion of an involuntary examination pursuant to this subsection. A psychiatric nurse practitioner may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist. ~~However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.~~

(g) A person may not be held for involuntary examination for more than 72 hours from the time of his or her arrival at the facility. Based on the person's needs, one of the following actions must be taken within the involuntary examination period:

1. The person must be released with the approval of a physician, psychiatrist, psychiatric nurse practitioner, or clinical psychologist. However, if the examination is conducted in a hospital, an attending emergency department physician with experience in the diagnosis and treatment of mental illness may approve the release.

2. The person must be asked to give express and informed consent for voluntary admission if a physician, psychiatrist, psychiatric nurse practitioner, or clinical psychologist has determined that the individual is competent to consent to treatment.

3. A petition for involuntary services must be completed and filed in the circuit court by the facility administrator. If electronic filing of the petition is not available in the county and the 72-hour period ends on a weekend or legal holiday, the petition must be filed by the next working day. If involuntary services are deemed necessary, the least restrictive treatment

consistent with the optimum improvement of the person's condition must be made available.

(h) An individual discharged from a facility on a voluntary or an involuntary basis who is currently charged with a crime shall be released to the custody of a law enforcement officer, unless the individual has been released from law enforcement custody by posting of a bond, by a pretrial conditional release, or by other judicial release.

(i) ~~(g)~~ A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must be examined by an appropriate ~~a receiving~~ facility within 72 hours. The 72-hour period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient services ~~placement~~ pursuant to s. 394.4655(1) or involuntary inpatient placement pursuant to s. 394.467(1), the patient may be offered voluntary placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary inpatient placement or involuntary outpatient services ~~placement~~ must be entered into the patient's clinical record. ~~Nothing in~~ This paragraph is not intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another

hospital before ~~prior to~~ stabilization if~~, provided~~ the requirements of s. 395.1041(3)(c) have been met.

(j) ~~(h)~~ One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist:

1. The patient must be examined by an appropriate ~~a designated receiving~~ facility and released; or

2. The patient must be transferred to a designated ~~receiving~~ facility in which appropriate medical treatment is available. However, the ~~receiving~~ facility must be notified of the transfer within 2 hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist.

~~(i) Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:~~

~~1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;~~

~~2. The patient shall be released, subject to the provisions of subparagraph 1., for voluntary outpatient treatment;~~

~~3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient shall be admitted as a voluntary patient; or~~

~~4. A petition for involuntary placement shall be filed in the circuit court when outpatient or inpatient treatment is~~

~~deemed necessary. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(3)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.~~

Section 11. Section 394.4655, Florida Statutes, is amended to read:

394.4655 Involuntary outpatient services ~~placement~~.—

(1) CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—A person may be ordered to involuntary outpatient services ~~placement~~ upon a finding of the court, by clear and convincing evidence, that the person meets all of the following criteria ~~by clear and convincing evidence~~:

(a) The person is 18 years of age or older.~~;~~

(b) The person has a mental illness.~~;~~

(c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.~~;~~

(d) The person has a history of lack of compliance with treatment for mental illness.~~;~~

(e) The person has:

1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or

2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months.~~,~~

(f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and ~~either he or she~~ has refused voluntary services ~~placement~~ for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary ~~purpose of placement for treatment~~ or ~~he or she~~ is unable to determine for himself or herself whether services are ~~placement is~~ necessary.~~,~~

(g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services ~~placement~~ in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1).~~,~~

(h) It is likely that the person will benefit from involuntary outpatient services. ~~placement; and~~

(i) All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

(2) INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a)1. A patient who is being recommended for involuntary outpatient services ~~placement~~ by the administrator of the ~~receiving~~ facility where the patient has been examined may be retained by the facility after adherence to the notice procedures provided in s. 394.4599. The recommendation must be supported by the opinion of two qualified professionals ~~a~~

~~psychiatrist and the second opinion of a clinical psychologist or another psychiatrist~~, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services ~~placement~~ are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a qualified professional ~~psychiatrist or clinical psychologist~~ is not available to provide the second opinion, the second opinion may be provided by a ~~licensed~~ physician who has postgraduate training and experience in diagnosis and treatment of mental ~~and nervous~~ disorders or by a psychiatric nurse practitioner. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient services ~~placement~~ certificate that authorizes the ~~receiving~~ facility to retain the patient pending completion of a hearing. The certificate must ~~shall~~ be made a part of the patient's clinical record.

2. If the patient has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the ~~receiving~~ facility while awaiting the hearing for involuntary outpatient services ~~placement~~. Before filing a petition for involuntary outpatient services ~~treatment~~, the administrator of the ~~a~~ ~~receiving~~ facility or a designated department representative must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient services ~~placement~~, unless the person is otherwise participating in outpatient psychiatric treatment and

is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.

3. The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient services ~~placement~~ order. The service provider shall also provide a copy of the treatment plan that addresses the nature and extent of the mental illness and any co-occurring substance use disorders that necessitate involuntary outpatient services. The treatment plan must specify the likely level of care, including the use of medication, and anticipated discharge criteria for terminating involuntary outpatient services. ~~The service provider shall also provide a copy of the proposed treatment plan to the patient and the administrator of the receiving facility. The treatment plan must specify the nature and extent of the patient's mental illness, address the reduction of symptoms that necessitate involuntary outpatient placement, and include measurable goals and objectives for the services and treatment that are provided to treat the person's mental illness and assist the person in living and functioning in the community or to prevent a relapse or deterioration~~. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the ~~treatment~~ plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse practitioner, mental health counselor, marriage and family therapist, or clinical social worker who

consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed treatment plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(b) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient services ~~placement~~, the administrator of the ~~treatment~~ facility may, before the expiration of the period during which the ~~treatment~~ facility is authorized to retain the patient, recommend involuntary outpatient services ~~placement~~. The recommendation must be supported by the opinion of two qualified professionals ~~a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist~~, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services ~~placement~~ are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a qualified professional ~~psychiatrist or clinical psychologist~~ is not available to provide the second opinion, the second opinion may be provided by a ~~licensed~~ physician who has postgraduate training and experience in diagnosis and treatment of mental ~~and nervous~~ disorders or by a psychiatric nurse practitioner. Any second

opinion authorized in this paragraph ~~subparagraph~~ may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient services ~~placement~~ certificate, and the certificate must be made a part of the patient's clinical record.

(c)1. The administrator of the ~~treatment~~ facility shall provide a copy of the involuntary outpatient services ~~placement~~ certificate and a copy of the state mental health discharge form to the managing entity ~~a department representative~~ in the county where the patient will be residing. For persons who are leaving a state mental health treatment facility, the petition for involuntary outpatient services ~~placement~~ must be filed in the county where the patient will be residing.

2. The service provider that will have primary responsibility for service provision shall be identified by the designated department representative before ~~prior to~~ the order for involuntary outpatient services ~~placement~~ and must, before ~~prior to~~ filing a petition for involuntary outpatient services ~~placement~~, certify to the court whether the services recommended in the patient's discharge plan are available ~~in the local community~~ and whether the service provider agrees to provide those services. The service provider must develop with the patient, or the patient's guardian advocate, if appointed, a treatment or service plan that addresses the needs identified in the discharge plan. The plan must be deemed to be clinically appropriate by a physician, clinical psychologist, psychiatric nurse practitioner, mental health counselor, marriage and family therapist, or clinical social worker, as defined in this

chapter, who consults with, or is employed or contracted by, the service provider.

3. If the service provider certifies that the services in the proposed treatment or service plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(3) PETITION FOR INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a) A petition for involuntary outpatient services ~~placement~~ may be filed by:

1. The administrator of a receiving facility; or

2. The administrator of a treatment facility.

(b) Each required criterion for involuntary outpatient services ~~placement~~ must be alleged and substantiated in the petition for involuntary outpatient services ~~placement~~. A copy of the certificate recommending involuntary outpatient services ~~placement~~ completed by two ~~a~~ qualified professionals ~~professional specified in subsection (2)~~ must be attached to the petition. A copy of the proposed treatment plan must be attached to the petition. Before the petition is filed, the service provider shall certify that the services in the proposed treatment plan are available. If the necessary services are not available ~~in the patient's local community to respond to the person's individual needs~~, the petition may not be filed. The service provider must notify the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(c) The petition for involuntary outpatient services ~~placement~~ must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside. When the petition has been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to the department, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel. A fee may not be charged for filing a petition under this subsection.

(4) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary outpatient services ~~placement~~, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of the appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary outpatient services ~~placement~~. An attorney who represents the patient must be provided ~~shall have~~ access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(5) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing. The continuance shall be for a period of up to 4 weeks.

(6) HEARING ON INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a)1. The court shall hold the hearing on involuntary outpatient services ~~placement~~ within 5 working days after the filing of the petition, unless a continuance is granted. The hearing must ~~shall~~ be held in the county where the petition is filed, must ~~shall~~ be as convenient to the patient as is consistent with orderly procedure, and must ~~shall~~ be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding.

2. The court may appoint a general or special master to preside at the hearing. One of the professionals who executed the involuntary outpatient services ~~placement~~ certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided by law ~~provide for one~~. The independent expert's report is ~~shall be~~ confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the person's prior history and how that prior history relates to the person's current

condition. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(b)1. If the court concludes that the patient meets the criteria for involuntary outpatient services ~~placement~~ pursuant to subsection (1), the court shall issue an order for involuntary outpatient services ~~placement~~. The court order shall be for a period of up to 90 days ~~6 months~~. The order must specify the nature and extent of the patient's mental illness. The order of the court and the treatment plan must ~~shall~~ be made part of the patient's clinical record. The service provider shall discharge a patient from involuntary outpatient services ~~placement~~ when the order expires or any time the patient no longer meets the criteria for involuntary services ~~placement~~. Upon discharge, the service provider shall send a certificate of discharge to the court.

2. The court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service. The service provider must notify the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the managing entity ~~Agency for Health Care Administration~~ by the service provider within 1 working day after it is received from the court. The order may be submitted electronically through existing data systems. After the ~~placement~~ order for involuntary services is issued, the service

provider and the patient may modify ~~provisions of~~ the treatment plan. For any material modification of the treatment plan to which the patient or, if one is appointed, the patient's guardian advocate agrees~~, if appointed, does agree~~, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable ~~appointed~~, must be approved or disapproved by the court consistent with subsection (2).

3. If, in the clinical judgment of a physician, the patient has failed or ~~has~~ refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a person may be brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement pursuant to s. 394.467, the patient must be discharged from the ~~receiving~~ facility. The involuntary outpatient services ~~placement~~ order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services ~~placement~~ or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if applicable ~~appointed~~, agrees ~~does agree~~, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which

are contested by the patient or the patient's guardian advocate, if applicable ~~appointed~~, must be approved or disapproved by the court consistent with subsection (2).

(c) If, at any time before the conclusion of the initial hearing on involuntary outpatient services ~~placement~~, it appears to the court that the person does not meet the criteria for involuntary outpatient services ~~placement~~ under this section but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination under s. 394.463. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings are ~~shall be~~ governed by chapter 397.

(d) At the hearing on involuntary outpatient services ~~placement~~, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598. The guardian advocate shall be appointed or discharged in accordance with s. 394.4598.

(e) The administrator of the receiving facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient services ~~placement~~. Such documentation must include any advance directives made by the patient, a psychiatric evaluation of the

patient, and any evaluations of the patient performed by a ~~clinical~~ psychologist or a clinical social worker.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a)1. If the person continues to meet the criteria for involuntary outpatient services ~~placement~~, the service provider shall, at least 10 days before the expiration of the period during which the treatment is ordered for the person, file in the circuit court a petition for continued involuntary outpatient services ~~placement~~. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.

2. The existing involuntary outpatient services ~~placement~~ order remains in effect until disposition on the petition for continued involuntary outpatient services ~~placement~~.

3. A certificate shall be attached to the petition which includes a statement from the person's physician or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was receiving involuntarily services ~~placed~~, and an individualized plan of continued treatment.

4. The service provider shall develop the individualized plan of continued treatment in consultation with the patient or the patient's guardian advocate, if applicable ~~appointed~~. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued treatment to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.

(b) Within 1 court working day after the filing of a petition for continued involuntary outpatient services ~~placement~~, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the person until the petition is dismissed or the court order expires or the patient is discharged from involuntary outpatient services ~~placement~~. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(c) Hearings on petitions for continued involuntary outpatient services must ~~placement shall~~ be before the circuit court. The court may appoint a general or special master to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph must meet the requirements of ~~shall be in accordance with~~ subsection (6), except that the time period included in paragraph (1)(e) does not apply when ~~is not applicable in~~ determining the appropriateness of additional periods of involuntary outpatient services ~~placement~~.

(d) Notice of the hearing must ~~shall~~ be provided as set forth in s. 394.4599. The patient and the patient's attorney may agree to a period of continued outpatient services ~~placement~~ without a court hearing.

(e) The same procedure must ~~shall~~ be repeated before the expiration of each additional period the patient is placed in

treatment.

(f) If the patient has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. Section 394.4598 governs the discharge of the guardian advocate if the patient's competency to consent to treatment has been restored.

Section 12. Section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary inpatient placement.—

(1) CRITERIA.—A person may be ordered for ~~placed in~~ involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

(a) He or she has a mental illness ~~is mentally ill~~ and because of his or her mental illness:

1.a. He or she has refused voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of inpatient placement for treatment; or

b. He or she is unable to determine for himself or herself whether inpatient placement is necessary; and

2.a. He or she is ~~manifestly~~ incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial physical or mental harm to his or her well-being; or

b. There is substantial likelihood that in the near future he or she will inflict serious bodily harm on self or others

~~himself or herself or another person~~, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available, less restrictive treatment alternatives that ~~which~~ would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

(2) ADMISSION TO A TREATMENT FACILITY.—A patient may be retained by a ~~receiving~~ facility or involuntarily placed in a treatment facility upon the recommendation of the administrator of the ~~receiving~~ facility where the patient has been examined and after adherence to the notice and hearing procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a psychiatric nurse practitioner, clinical psychologist, or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary inpatient placement are met. However, in a county that has a population of fewer than 50,000, if the administrator certifies that a psychiatrist, psychiatric nurse practitioner, or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a ~~licensed~~ physician who has postgraduate training and experience in diagnosis and treatment of mental illness ~~and nervous disorders~~ or by a psychiatric nurse practitioner. Any second opinion authorized in this subsection may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation shall be entered on a petition for ~~an~~ involuntary inpatient placement certificate that authorizes the ~~receiving~~ facility to retain the patient pending transfer to a treatment facility or completion of a hearing.

(3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—

(a) The administrator of the facility shall file a petition for involuntary inpatient placement in the court in the county where the patient is located. Upon filing, the clerk of the court shall provide copies to the department, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located. A ~~No~~ fee may not ~~shall~~ be charged for the filing of a petition under this subsection.

(b) A facility filing a petition under this subsection for involuntary inpatient placement shall send a copy of the petition to the managing entity in its area.

(4) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary inpatient placement, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(5) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing~~. The continuance shall be~~ for ~~a period of~~ up to 4 weeks.

(6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

(a)1. The court shall hold the hearing on involuntary

inpatient placement within 5 court working days, unless a continuance is granted.

2. Except for good cause documented in the court file, the hearing must ~~shall~~ be held in the county or the facility, as appropriate, where the patient is located, must ~~and shall~~ be as convenient to the patient as is ~~may be~~ consistent with orderly procedure, and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient, and the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.

3.~~2.~~ The court may appoint a general or special magistrate to preside at the hearing. One of the two professionals who executed the petition for involuntary inpatient placement certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided for by law ~~provide for one~~. The independent expert's report is ~~shall be~~ confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(b) If the court concludes that the patient meets the criteria for involuntary inpatient placement, it may ~~shall~~ order that the patient be transferred to a treatment facility or, if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate ~~receiving or treatment~~ facility, or that the patient receive services from such a ~~receiving or treatment~~ facility or service provider, on an involuntary basis, for a period of up to 90 days ~~6 months~~. However, any order for involuntary mental health services in a treatment facility may be for up to 6 months. The order shall specify the nature and extent of the patient's mental illness The court may not order an individual with traumatic brain injury or dementia who lacks a co-occurring mental illness to be involuntarily placed in a treatment facility. The facility shall discharge a patient any time the patient no longer meets the criteria for involuntary inpatient placement, unless the patient has transferred to voluntary status.

(c) If at any time before ~~prior to~~ the conclusion of the hearing on involuntary inpatient placement it appears to the court that the person does not meet the criteria for involuntary inpatient placement under this section, but instead meets the criteria for involuntary outpatient services ~~placement~~, the court may order the person evaluated for involuntary outpatient services ~~placement~~ pursuant to s. 394.4655. The petition and hearing procedures set forth in s. 394.4655 shall apply. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, then the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s.

397.6811. Thereafter, all proceedings are ~~shall be~~ governed by chapter 397.

(d) At the hearing on involuntary inpatient placement, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598.

(e) The administrator of the petitioning ~~receiving~~ facility shall provide a copy of the court order and adequate documentation of a patient's mental illness to the administrator of a treatment facility if the ~~whenever a~~ patient is ordered for involuntary inpatient placement, whether by civil or criminal court. The documentation must ~~shall~~ include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a psychiatric nurse practitioner, clinical psychologist, a marriage and family therapist, a mental health counselor, or a clinical social worker. The administrator of a treatment facility may refuse admission to any patient directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied ~~at the same time~~ by adequate orders and documentation.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT PLACEMENT.—

(a) Hearings on petitions for continued involuntary inpatient placement of an individual placed at any treatment facility are ~~shall be~~ administrative hearings and must ~~shall~~ be conducted in accordance with ~~the provisions of~~ s. 120.57(1), except that any order entered by the administrative law judge is

~~shall be~~ final and subject to judicial review in accordance with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity are ~~shall be~~ governed by ~~the provisions of~~ s. 916.15.

(b) If the patient continues to meet the criteria for involuntary inpatient placement and is being treated at a treatment facility, the administrator shall, before ~~prior to~~ the expiration of the period ~~during which~~ the treatment facility is authorized to retain the patient, file a petition requesting authorization for continued involuntary inpatient placement. The request must ~~shall~~ be accompanied by a statement from the patient's physician, psychiatrist, psychiatric nurse practitioner, or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was involuntarily placed, and an individualized plan of continued treatment. Notice of the hearing must ~~shall~~ be provided as provided ~~set forth~~ in s. 394.4599. If a patient's attendance at the hearing is voluntarily waived, the administrative law judge must determine that the waiver is knowing and voluntary before waiving the presence of the patient from all or a portion of the hearing. Alternatively, if at the hearing the administrative law judge finds that attendance at the hearing is not consistent with the best interests of the patient, the administrative law judge may waive the presence of the patient from all or any portion of the hearing, unless the patient, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath, and the proceedings must be recorded.

(c) Unless the patient is otherwise represented or is

ineligible, he or she shall be represented at the hearing on the petition for continued involuntary inpatient placement by the public defender of the circuit in which the facility is located.

(d) If at a hearing it is shown that the patient continues to meet the criteria for involuntary inpatient placement, the administrative law judge shall sign the order for continued involuntary inpatient placement for a period of up to 90 days ~~not to exceed 6 months~~. However, any order for involuntary mental health services in a treatment facility may be for up to 6 months. The same procedure shall be repeated prior to the expiration of each additional period the patient is retained.

(e) If continued involuntary inpatient placement is necessary for a patient admitted while serving a criminal sentence, but his or her ~~whose~~ sentence is about to expire, or for a minor ~~patient~~ involuntarily placed, ~~while a minor~~ but who is about to reach the age of 18, the administrator shall petition the administrative law judge for an order authorizing continued involuntary inpatient placement.

(f) If the patient has been previously found incompetent to consent to treatment, the administrative law judge shall consider testimony and evidence regarding the patient's competence. If the administrative law judge finds evidence that the patient is now competent to consent to treatment, the administrative law judge may issue a recommended order to the court that found the patient incompetent to consent to treatment that the patient's competence be restored and that any guardian advocate previously appointed be discharged.

(g) If the patient has been ordered to undergo involuntary inpatient placement and has previously been found incompetent to

consent to treatment, the court shall consider testimony and evidence regarding the patient's incompetence. If the patient's competency to consent to treatment is restored, the discharge of the guardian advocate shall be governed by the provisions of s. 394.4598.

The procedure required in this subsection must be followed before the expiration of each additional period the patient is involuntarily receiving services.

(8) RETURN TO FACILITY ~~OF PATIENTS~~.—If a patient involuntarily held ~~When a patient~~ at a ~~treatment~~ facility under this part leaves the facility without the administrator's authorization, the administrator may authorize a search for the patient and his or her ~~the~~ return ~~of the patient~~ to the facility. The administrator may request the assistance of a law enforcement agency in this regard ~~the search for and return of the patient~~.

Section 13. Section 394.46715, Florida Statutes, is amended to read:

394.46715 Rulemaking authority.—The department may adopt rules to administer this part ~~Department of Children and Families shall have rulemaking authority to implement the provisions of ss. 394.455, 394.4598, 394.4615, 394.463, 394.4655, and 394.467 as amended or created by this act. These rules shall be for the purpose of protecting the health, safety, and well-being of persons examined, treated, or placed under this act~~.

Section 14. Section 394.761, Florida Statutes, is created to read:

394.761 Revenue maximization.—The department, in coordination with the managing entities, shall compile detailed documentation of the cost and reimbursements for Medicaid covered services provided to Medicaid eligible individuals by providers of behavioral health services that are also funded for programs authorized by this chapter and chapter 397. The department's documentation, along with a report of general revenue funds supporting behavioral health services that are not counted as maintenance of effort or match for any other federal program, will be submitted to the Agency for Health Care Administration by December 31, 2016. Copies of the report must also be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives. If this report presents clear evidence that Medicaid reimbursements are less than the costs of providing the services, the Agency for Health Care Administration and the Department of Children and Families will prepare and submit any budget amendments necessary to use unmatched general revenue funds in the 2016-2017 fiscal year to draw additional federal funding to increase Medicaid funding to behavioral health service providers receiving the unmatched general revenue. Payments shall be made to providers in such manner as is allowed by federal law and regulations.

Section 15. Subsection (11) is added to section 394.875, Florida Statutes, to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required.—

(11) By January 1, 2017, the department and the agency shall modify licensure rules and procedures to create an option

for a single, consolidated license for a provider who offers multiple types of mental health and substance abuse services regulated under this chapter and chapter 397. Providers eligible for a consolidated license shall operate these services through a single corporate entity and a unified management structure. Any provider serving adults and children must meet department standards for separate facilities and other requirements necessary to ensure children's safety and promote therapeutic efficacy.

Section 16. Section 394.9082, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 394.9082, F.S., for present text.)

394.9082 Behavioral health managing entities' purpose; definitions; duties; contracting; accountability.—

(1) PURPOSE.—The purpose of the behavioral health managing entities is to plan, coordinate and contract for the delivery of community mental health and substance abuse services, to improve access to care, to promote service continuity, to purchase services, and to support efficient and effective delivery of services.

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

(a) "Behavioral health services" means mental health services and substance abuse prevention and treatment services as described in this chapter and chapter 397.

(b) "Case management" means those direct services provided to a client in order to assess needs, plan or arrange services, coordinate service providers, monitor service delivery, and evaluate outcomes.

(c) "Coordinated system of care" means the full array of behavioral health and related services in a region or a community offered by all service providers, whether participating under contract with the managing entity or through another method of community partnership or mutual agreement.

(d) "Geographic area" means one or more contiguous counties, circuits, or regions as described in s. 409.966 or s. 381.0406.

(e) "High-need or high-utilization individual" means a recipient who meets one or more of the following criteria and may be eligible for intensive case management services:

1. Has resided in a state mental health facility for at least 6 months in the last 36 months;

2. Has had two or more admissions to a state mental health facility in the last 36 months; or

3. Has had three or more admissions to a crisis stabilization unit, an addictions receiving facility, a short-term residential facility, or an inpatient psychiatric unit within the last 12 months.

(f) "Managing entity" means a corporation designated or filed as a nonprofit organization under s. 501(c)(3) of the Internal Revenue Code which is selected by, and is under contract with, the department to manage the daily operational delivery of behavioral health services through a coordinated system of care.

(g) "Provider network" means the group of direct service providers, facilities, and organizations under contract with a managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and

consumer support services, including prevention services.

(h) "Receiving facility" means any public or private facility designated by the department to receive and hold or to refer, 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. County jails may not be used or designated as a receiving facility, a triage center, or an access center.

(3) DEPARTMENT DUTIES.—The department shall:

(a) Designate, with input from the managing entity, facilities that meet the definitions in s. 394.455(1), (2), (13), and (41) and the receiving system developed by one or more counties pursuant to s. 394.4573(2)(b).

(b) Contract with organizations to serve as the managing entity in accordance with the requirements of this section.

(c) Specify the geographic area served.

(d) Specify data reporting and use of shared data systems.

(e) Develop strategies to divert persons with mental illness or substance abuse disorders from the criminal and juvenile justice systems.

(f) Support the development and implementation of a coordinated system of care by requiring each provider that receives state funds for behavioral health services through a direct contract with the department to work with the managing entity in the provider's service area to coordinate the provision of behavioral health services, as part of the contract with the department.

(g) Set performance measures and performance standards for managing entities based on nationally recognized standards, such

as those developed by the National Quality Forum, the National Committee for Quality Assurance, or similar credible sources. Performance standards must include all of the following:

1. Annual improvement in the extent to which the need for behavioral health services is met by the coordinated system of care in the geographic area served.

2. Annual improvement in the percentage of patients who receive services through the coordinated system of care and who achieve improved functional status as indicated by health condition, employment status, and housing stability.

3. Annual reduction in the rates of readmissions to acute care facilities, jails, prisons, and forensic facilities for persons receiving care coordination.

4. Annual improvement in consumer and family satisfaction.

(h) Provide technical assistance to the managing entities.

(i) Promote the integration of behavioral health care and primary care.

(j) Facilitate the coordination between the managing entity and other payors of behavioral health care.

(k) Develop and provide a unique identifier for clients receiving services under the managing entity to coordinate care.

(l) Coordinate procedures for the referral and admission of patients to, and the discharge of patients from, state treatment facilities and their return to the community.

(m) Ensure that managing entities comply with state and federal laws, rules, and regulations.

(n) Develop rules for the operations of, and the requirements that must be met by, the managing entity, if necessary.

(4) CONTRACT WITH MANAGING ENTITIES.—

(a) The department's contracts with managing entities must support efficient and effective administration of the behavioral health system and ensure accountability for performance.

(b) Beginning July 1, 2018, managing entities under contract with the department are subject to a contract performance review. The review must include:

1. Analysis of the duties and performance measures described in this section;

2. The results of contract monitoring compiled during the term of the contract; and

3. Related compliance and performance issues.

(c) For the managing entities whose performance is determined satisfactory after completion of the review pursuant to paragraph (b), and before the end of the term of the contract, the department may negotiate and enter into a contract with the managing entity for a period of 4 years pursuant to s. 287.057(3)(e).

(d) The performance review must be completed by the beginning of the third year of the 4-year contract. In the event the managing entity does not meet the requirements of the performance review, a corrective action plan must be created by the department. The managing entity must complete the corrective action plan before the beginning of the fourth year of the contract. If the corrective action plan is not satisfactorily completed, the department shall provide notice to the managing entity that the contract will be terminated at the end of the contract term and the department shall initiate a competitive procurement process to select a new managing entity pursuant to

s. 287.057.

(5) MANAGING ENTITIES DUTIES.—A managing entity shall:

(a) Maintain a board of directors that is representative of the community and that, at a minimum, includes consumers and family members, community stakeholders and organizations, and providers of mental health and substance abuse services, including public and private receiving facilities.

(b) Conduct a community behavioral health care needs assessment in the geographic area served by the managing entity. The needs assessment must be updated annually and provided to the department. The assessment must include, at a minimum, the information the department needs for its annual report to the Governor and Legislature pursuant to s. 394.4573.

(c) Develop local resources by pursuing third-party payments for services, applying for grants, securing local matching funds and in-kind services, and any other methods needed to ensure services are available and accessible.

(d) Provide assistance to counties to develop a designated receiving system pursuant to s. 394.4573(2)(b) and a transportation plan pursuant to s. 394.462.

(e) Promote the development and effective implementation of a coordinated system of care pursuant to s. 394.4573.

(f) Develop a comprehensive network of qualified providers to deliver behavioral health services. The managing entity is not required to competitively procure network providers, but must have a process in place to publicize opportunities to join the network and to evaluate providers in the network to determine if they can remain in the network. These processes must be published on the website of the managing entity. The

managing entity must ensure continuity of care for clients if a provider ceases to provide a service or leaves the network.

(g) Enter into cooperative agreements with local homeless councils and organizations to allow the sharing of available resource information, shared client information, client referral services, and any other data or information that may be useful in addressing the homelessness of persons suffering from a behavioral health crisis.

(h) Monitor network providers' performance and their compliance with contract requirements and federal and state laws, rules, and regulations.

(i) Provide or contract for case management services.

(j) Manage and allocate funds for services to meet the requirements of law or rule.

(k) Promote integration of behavioral health with primary care.

(l) Implement shared data systems necessary for the delivery of coordinated care and integrated services, the assessment of managing entity performance and provider performance, and the reporting of outcomes and costs of services.

(m) Operate in a transparent manner, providing public access to information, notice of meetings, and opportunities for public participation in managing entity decisionmaking.

(n) Establish and maintain effective relationships with community stakeholders, including local governments and other organizations that serve individuals with behavioral health needs.

(o) Collaborate with local criminal and juvenile justice

systems to divert persons with mental illness or substance abuse disorders, or both, from the criminal and juvenile justice systems.

(p) Collaborate with the local court system to develop procedures to maximize the use of involuntary outpatient services; reduce involuntary inpatient treatment; and increase diversion from the criminal and juvenile justice systems.

(6) FUNDING FOR MANAGING ENTITIES.—

(a) A contract established between the department and a managing entity under this section must be funded by general revenue, other applicable state funds, or applicable federal funding sources. A managing entity may carry forward documented unexpended state funds from one fiscal year to the next, but the cumulative amount carried forward may not exceed 8 percent of the total value of the contract. Any unexpended state funds in excess of that percentage must be returned to the department. The funds carried forward may not be used in a way that would increase future recurring obligations or for any program or service that was not authorized as of July 1, 2016, under the existing contract with the department. Expenditures of funds carried forward must be separately reported to the department. Any unexpended funds that remain at the end of the contract period must be returned to the department. Funds carried forward may be retained through contract renewals and new contract procurements as long as the same managing entity is retained by the department.

(b) The method of payment for a fixed-price contract with a managing entity must provide for a 2-month advance payment at the beginning of each fiscal year and equal monthly payments

thereafter.

(7) CRISIS STABILIZATION SERVICES UTILIZATION DATABASE.—The department shall develop, implement, and maintain standards under which a managing entity shall collect utilization data from all public receiving facilities situated within its geographic service area. As used in this subsection, the term "public receiving facility" means an entity that meets the licensure requirements of, and is designated by, the department to operate as a public receiving facility under s. 394.875 and that is operating as a licensed crisis stabilization unit.

(a) The department shall develop standards and protocols for managing entities and public receiving facilities to be used for data collection, storage, transmittal, and analysis. The standards and protocols must allow for compatibility of data and data transmittal between public receiving facilities, managing entities, and the department for the implementation and requirements of this subsection.

(b) A managing entity shall require a public receiving facility within its provider network to submit data, in real time or at least daily, to the managing entity for:

1. All admissions and discharges of clients receiving public receiving facility services who qualify as indigent, as defined in s. 394.4787; and

2. The current active census of total licensed beds, the number of beds purchased by the department, the number of clients qualifying as indigent who occupy those beds, and the total number of unoccupied licensed beds regardless of funding.

(c) A managing entity shall require a public receiving facility within its provider network to submit data, on a

monthly basis, to the managing entity which aggregates the daily data submitted under paragraph (b). The managing entity shall reconcile the data in the monthly submission to the data received by the managing entity under paragraph (b) to check for consistency. If the monthly aggregate data submitted by a public receiving facility under this paragraph are inconsistent with the daily data submitted under paragraph (b), the managing entity shall consult with the public receiving facility to make corrections necessary to ensure accurate data.

(d) A managing entity shall require a public receiving facility within its provider network to submit data, on an annual basis, to the managing entity which aggregates the data submitted and reconciled under paragraph (c). The managing entity shall reconcile the data in the annual submission to the data received and reconciled by the managing entity under paragraph (c) to check for consistency. If the annual aggregate data submitted by a public receiving facility under this paragraph are inconsistent with the data received and reconciled under paragraph (c), the managing entity shall consult with the public receiving facility to make corrections necessary to ensure accurate data.

(e) After ensuring the accuracy of data pursuant to paragraphs (c) and (d), the managing entity shall submit the data to the department on a monthly and an annual basis. The department shall create a statewide database for the data described under paragraph (b) and submitted under this paragraph for the purpose of analyzing the payments for and the use of crisis stabilization services funded by the Baker Act on a statewide basis and on an individual public receiving facility

basis.

Section 17. Present subsections (20) through (45) of section 397.311, Florida Statutes, are redesignated as subsections (21) through (46), respectively, a new subsection (20) is added to that section, and present subsections (30) and (38) of that section are amended, to read:

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

(20) "Involuntary services" means court-ordered outpatient services or treatment for substance abuse disorders or services provided in an inpatient placement in a receiving facility or treatment facility.

(31) ~~(30)~~ "Qualified professional" means a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an advanced registered nurse practitioner ~~having a specialty in psychiatry~~ licensed under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

(39) ~~(38)~~ "Service component" or "component" means a discrete operational entity within a service provider which is

subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment described in subsection (23) ~~(22)~~.

Section 18. Section 397.675, Florida Statutes, is amended to read:

397.675 Criteria for involuntary admissions, including protective custody, emergency admission, and other involuntary assessment, involuntary treatment, and alternative involuntary assessment for minors, for purposes of assessment and stabilization, and for involuntary treatment.—A person meets the criteria for involuntary admission if there is good faith reason to believe that the person has a substance abuse or co-occurring mental health disorder ~~is substance abuse impaired~~ and, because of such disorder ~~impairment~~:

(1) Has lost the power of self-control with respect to substance abuse ~~use~~; and ~~either~~

(2)(a) ~~Has inflicted, or threatened or attempted to inflict, or unless admitted is likely to inflict, physical harm on himself or herself or another; or~~

~~(b)~~ Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she ~~the person~~ is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although ~~thereto; however,~~ mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services.

(b) Without care or treatment, is likely to suffer from neglect or to refuse to care for himself or herself, that such neglect or refusal poses a real and present threat of

substantial harm to his or her well-being and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another.

Section 19. Section 397.679, Florida Statutes, is amended to read:

397.679 Emergency admission; circumstances justifying.—A person who meets the criteria for involuntary admission in s. 397.675 may be admitted to a hospital or to a licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only, upon receipt by the facility of a ~~the physician's~~ certificate by a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's-level-certified addictions professional, if the certificate is specific to substance abuse disorders, and the completion of an application for emergency admission.

Section 20. Section 397.6791, Florida Statutes, is amended to read:

397.6791 Emergency admission; persons who may initiate.—The following professionals ~~persons~~ may request a certificate for ~~an~~ emergency assessment or admission:

(1) In the case of an adult, physicians, advanced registered nurse practitioners, clinical psychologists, licensed clinical social workers, licensed marriage and family therapists, licensed mental health counselors, physician assistants working under the scope of practice of the supervising physician, and a master's-level-certified addictions professional, if the certificate is specific to substance abuse disorders ~~the certifying physician~~, the person's spouse or legal guardian, any relative of the person, or any other responsible adult who has personal knowledge of the person's substance abuse impairment.

(2) In the case of a minor, the minor's parent, legal guardian, or legal custodian.

Section 21. Section 397.6793, Florida Statutes, is amended to read:

397.6793 Professional's ~~Physician's~~ certificate for emergency admission.—

(1) The professional's ~~physician's~~ certificate must include the name of the person to be admitted, the relationship between the person and the professional executing the certificate ~~physician~~, the relationship between the applicant and the professional ~~physician~~, any relationship between the professional ~~physician~~ and the licensed service provider, ~~and~~ a statement that the person has been examined and assessed within the preceding 5 days of the application date, and ~~must include~~ factual allegations with respect to the need for emergency admission, including:

(a) The reason for the ~~physician's~~ belief that the person is substance abuse impaired; and

(b) The reason for the ~~physician's~~ belief that because of such impairment the person has lost the power of self-control with respect to substance abuse; and ~~either~~

(c)1. The reason for the belief ~~physician believes~~ that, without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services or there is substantial likelihood that the person has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

2. The reason for the belief ~~physician believes~~ that the person's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the person is incapable of appreciating his or her need for care and of making a rational decision regarding his or her need for care.

(2) The professional's ~~physician's~~ certificate must recommend the least restrictive type of service that is appropriate for the person. The certificate must be signed by the professional ~~physician~~. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the appropriate facility for involuntary examination.

(3) A signed copy of the professional's ~~physician's~~ certificate shall accompany the person~~,~~ and shall be made a part

of the person's clinical record, together with a signed copy of the application. The application and the professional's ~~physician's~~ certificate authorize the involuntary admission of the person pursuant to, and subject to the provisions of, ss. 397.679-397.6797.

(4) The professional's certificate is valid for 7 days after issuance.

(5) The professional's ~~physician's~~ certificate must indicate whether the person requires transportation assistance for delivery for emergency admission and specify, pursuant to s. 397.6795, the type of transportation assistance necessary.

Section 22. Section 397.6795, Florida Statutes, is amended to read:

397.6795 Transportation-assisted delivery of persons for emergency assessment.—An applicant for a person's emergency admission, ~~or~~ the person's spouse or guardian, or a law enforcement officer~~, or a health officer~~ may deliver a person named in the professional's ~~physician's~~ certificate for emergency admission to a hospital or a licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization.

Section 23. Subsection (1) of section 397.681, Florida Statutes, is amended to read:

397.681 Involuntary petitions; general provisions; court jurisdiction and right to counsel.—

(1) JURISDICTION.—The courts have jurisdiction of involuntary assessment and stabilization petitions and involuntary treatment petitions for substance abuse impaired persons, and such petitions must be filed with the clerk of the

court in the county where the person is located. The clerk of the court may not charge a fee for the filing of a petition under this section. The chief judge may appoint a general or special magistrate to preside over all or part of the proceedings. The alleged impaired person is named as the respondent.

Section 24. Subsection (1) of section 397.6811, Florida Statutes, is amended to read:

397.6811 Involuntary assessment and stabilization.—A person determined by the court to appear to meet the criteria for involuntary admission under s. 397.675 may be admitted for a period of 5 days to a hospital or to a licensed detoxification facility or addictions receiving facility, for involuntary assessment and stabilization or to a less restrictive component of a licensed service provider for assessment only upon entry of a court order or upon receipt by the licensed service provider of a petition. Involuntary assessment and stabilization may be initiated by the submission of a petition to the court.

(1) If the person upon whose behalf the petition is being filed is an adult, a petition for involuntary assessment and stabilization may be filed by the respondent's spouse ~~or~~ ,legal guardian, any relative, a private practitioner, the director of a licensed service provider or the director's designee, or any individual ~~three adults~~ who has direct ~~have~~ personal knowledge of the respondent's substance abuse impairment.

Section 25. Section 397.6814, Florida Statutes, is amended to read:

397.6814 Involuntary assessment and stabilization; contents of petition.—A petition for involuntary assessment and

stabilization must contain the name of the respondent, ~~,~~ the name of the applicant or applicants, ~~,~~ the relationship between the respondent and the applicant, and ~~,~~ the name of the respondent's attorney, if known, ~~and a statement of the respondent's ability to afford an attorney;~~ and must state facts to support the need for involuntary assessment and stabilization, including:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired; ~~and~~

(2) The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and ~~either~~

(3)(a) The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care. If the respondent has refused to submit to an assessment, such refusal must be alleged in the petition.

A fee may not be charged for the filing of a petition pursuant to this section.

Section 26. Section 397.6819, Florida Statutes, is amended to read:

397.6819 Involuntary assessment and stabilization; responsibility of licensed service provider.—A licensed service provider may admit an individual for involuntary assessment and

stabilization for a period not to exceed 5 days unless a petition for involuntary outpatient services has been initiated which authorizes the licensed service provider to retain physical custody of the person pending further order of the court pursuant to s. 397.6821. The individual must be assessed within 24 hours ~~without unnecessary delay~~ by a qualified professional. The person may not be held pursuant to this section beyond the 24-hour assessment period unless the assessment has been reviewed and authorized by a licensed physician as necessary for continued stabilization. If an assessment is performed by a qualified professional who is not a physician, the assessment must be reviewed by a physician before the end of the assessment period.

Section 27. Section 397.695, Florida Statutes, is amended to read:

397.695 Involuntary outpatient services ~~treatment~~; persons who may petition.—

(1)(a) If the respondent is an adult, a petition for involuntary outpatient services ~~treatment~~ may be filed by the respondent's spouse or legal guardian, any relative, a service provider, or any individual ~~three adults~~ who has direct ~~have~~ personal knowledge of the respondent's substance abuse impairment and his or her prior course of assessment and treatment.

(b) The administrator of a receiving facility, a crisis stabilization unit, or an addictions receiving facility where the patient has been examined may retain the patient at the facility after adherence to the notice procedures provided in s. 397.6955. The recommendation for involuntary outpatient services

must be supported by the opinion of a qualified professional as defined in s. 397.311(31) or a master's-level-certified addictions professional and by the second opinion of a psychologist, a physician, or an advanced registered nurse practitioner licensed under chapter 464, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, in a county having a population of fewer than 50,000, if the administrator of the facility certifies that a qualified professional is not available to provide the second opinion, the second opinion may be provided by a physician who has postgraduate training and experience in the diagnosis and treatment of substance abuse disorders. Any second opinion authorized in this section may be conducted through face-to-face examination, in person, or by electronic means. Such recommendation must be entered on an involuntary outpatient certificate that authorizes the facility to retain the patient pending completion of a hearing. The certificate must be made a part of the patient's clinical record.

(c) If the patient has been stabilized and no longer meets the criteria for involuntary assessment and stabilization pursuant to s. 397.6811, the patient must be released from the facility while awaiting the hearing for involuntary outpatient services. Before filing a petition for involuntary outpatient services, the administrator of the facility must identify the service provider that will have responsibility for service provision under the order for involuntary outpatient services, unless the person is otherwise participating in outpatient substance abuse disorder services and is not in need of public

financing of the services, in which case the person, if eligible, may be ordered to involuntary outpatient services pursuant to the existing provision-of-services relationship he or she has for substance abuse disorder services.

(d) The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if applicable, for the order for outpatient services and provide a copy of the proposed treatment plan to the patient and the administrator of the facility. The service provider shall also provide a treatment plan that addresses the nature and extent of the substance abuse disorder and any co-occurring mental illness and the risks that necessitates involuntary outpatient services. The treatment plan must indicate the likely level of care, including medication and the anticipated discharge criteria for terminating involuntary outpatient services. Service providers may coordinate, select, and supervise other individuals to implement specific aspects of the treatment plan. The services in the treatment plan must be deemed clinically appropriate by a qualified professional who consults with, or is employed by, the service provider. The service provider must certify that the recommended services in the treatment plan are available for the stabilization and improvement of the patient. If the service provider certifies that the recommended services in the proposed treatment plan are not available, the petition may not be filed. The service provider must document its inquiry with the department and the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(e) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient services, the administrator of the treatment facility may, before the expiration of the period during which the treatment facility is authorized to retain the patient, recommend involuntary outpatient services. The recommendation must be supported by the opinion of a qualified professional as defined in s. 397.311(31) or a master's-level-certified addictions professional and by the second opinion of a psychologist, a physician, an advanced registered nurse practitioner licensed under chapter 464, or a mental health professional licensed under chapter 491, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, in a county having a population of fewer than 50,000, if the administrator of the facility certifies that a qualified professional is not available to provide the second opinion, the second opinion may be provided by a physician who has postgraduate training and experience in the diagnosis and treatment of substance abuse disorders. Any second opinion authorized in this section may be conducted through face-to-face examination, in person, or by electronic means. Such recommendation must be entered on an involuntary outpatient certificate that authorizes the facility to retain the patient pending completion of a hearing. The certificate must be made a part of the patient's clinical record.

(f) The service provider who is responsible for providing services under the order for involuntary outpatient services must be identified before the entry of the order for outpatient services. The service provider shall certify to the court that

the recommended services in the treatment plan are available for the stabilization and improvement of the patient. If the service provider certifies that the recommended services in the proposed treatment plan are not available, the petition may not be filed. The service provider must document notify the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(2) If the respondent is a minor, a petition for involuntary treatment may be filed by a parent, legal guardian, or service provider.

Section 28. Section 397.6951, Florida Statutes, is amended to read:

397.6951 Contents of petition for involuntary outpatient services ~~treatment~~.~~—~~A petition for involuntary outpatient services ~~treatment~~ must contain the name of the respondent ~~to be admitted~~; the name of the petitioner or petitioners; the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known~~, and a statement of the petitioner's knowledge of the respondent's ability to afford an attorney~~; the findings and recommendations of the assessment performed by the qualified professional; and the factual allegations presented by the petitioner establishing the need for involuntary outpatient services. The factual allegations must demonstrate ~~treatment, including~~:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired; ~~and~~

(2) The respondent's history of failure to comply with requirements for treatment for substance abuse and that the

respondent has been involuntarily admitted to a receiving or treatment facility at least twice within the immediately preceding 36 months; ~~The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and either~~

(3) That the respondent is, as a result of his or her substance abuse disorder, unlikely to voluntarily participate in the recommended services after sufficient and conscientious explanation and disclosure of the purpose of the services or he or she is unable to determine for himself or herself whether outpatient services are necessary;

(4) That, in view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services; that without services, the person is likely to suffer from neglect or to refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that there is a substantial likelihood that without services the person will cause serious bodily harm to himself, herself, or others in the near future, as evidenced by recent behavior; and

(5) That it is likely that the person will benefit from involuntary outpatient services.

~~(3)(a) The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or~~

~~(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care~~

~~and of making a rational decision regarding that need for care.~~

Section 29. Section 397.6955, Florida Statutes, is amended to read:

397.6955 Duties of court upon filing of petition for involuntary outpatient services ~~treatment~~.—

(1) Upon the filing of a petition for ~~the~~ involuntary outpatient services for ~~treatment of~~ a substance abuse impaired person with the clerk of the court, the court shall immediately determine whether the respondent is represented by an attorney or whether the appointment of counsel for the respondent is appropriate. If the court appoints counsel for the person, the clerk of the court shall immediately notify the regional conflict counsel, created pursuant to s. 27.511, of the appointment. The regional conflict counsel shall represent the person until the petition is dismissed, the court order expires, or the person is discharged from involuntary outpatient services. An attorney that represents the person named in the petition shall have access to the person, witnesses, and records relevant to the presentation of the person's case and shall represent the interests of the person, regardless of the source of payment to the attorney.

(2) The court shall schedule a hearing to be held on the petition within 5 ~~10~~ days unless a continuance is granted. The court may appoint a general or special master to preside at the hearing.

(3) A copy of the petition and notice of the hearing must be provided to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the

respondent's spouse or guardian, if applicable; and such other persons as the court may direct. If the respondent is a minor, a copy of the petition and notice of the hearing must be ~~and have such petition and order~~ personally delivered to the respondent ~~if he or she is a minor~~. The court shall also issue a summons to the person whose admission is sought.

Section 30. Section 397.6957, Florida Statutes, is amended to read:

397.6957 Hearing on petition for involuntary outpatient services ~~treatment~~.—

(1) At a hearing on a petition for involuntary outpatient services ~~treatment~~, the court shall hear and review all relevant evidence, including the review of results of the assessment completed by the qualified professional in connection with the respondent's protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. The respondent must be present unless the court finds that his or her presence is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act in behalf of the respondent throughout the proceedings.

(2) The petitioner has the burden of proving by clear and convincing evidence that:

(a) The respondent is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse;~~, and~~

(b) Because of such impairment the respondent is unlikely to voluntarily participate in the recommended treatment or is unable to determine for himself or herself whether outpatient

services are necessary ~~the respondent has lost the power of self-control with respect to substance abuse~~; and ~~either~~

1. Without services, the respondent is likely to suffer from neglect or to refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that there is a substantial likelihood that without services the respondent will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior ~~The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted~~; or

2. The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

(3) One of the qualified professionals who executed the involuntary outpatient services certificate must be a witness. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the respondent's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(4)~~(3)~~ At the conclusion of the hearing the court shall ~~either~~ dismiss the petition or order the respondent to receive ~~undergo~~ involuntary outpatient services from his or her ~~substance abuse treatment, with the respondent's~~ chosen licensed service provider if ~~to deliver the involuntary substance abuse~~

~~treatment where~~ possible and appropriate.

Section 31. Section 397.697, Florida Statutes, is amended to read:

397.697 Court determination; effect of court order for involuntary outpatient services ~~substance abuse treatment~~.—

(1) When the court finds that the conditions for involuntary outpatient services ~~substance abuse treatment~~ have been proved by clear and convincing evidence, it may order the respondent to receive ~~undergo~~ involuntary outpatient services from ~~treatment by~~ a licensed service provider for a period not to exceed 60 days. If the court finds it necessary, it may direct the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order, or to the nearest appropriate licensed service provider, for involuntary outpatient services ~~treatment~~. When the conditions justifying involuntary outpatient services ~~treatment~~ no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary outpatient services ~~treatment~~ are expected to exist after 60 days of services ~~treatment~~, a renewal of the involuntary outpatient services ~~treatment~~ order may be requested pursuant to s. 397.6975 before ~~prior to~~ the end of the 60-day period.

(2) In all cases resulting in an order for involuntary outpatient services ~~substance abuse treatment~~, the court shall retain jurisdiction over the case and the parties for the entry of such further orders as the circumstances may require. The court's requirements for notification of proposed release must be included in the original ~~treatment~~ order.

(3) An involuntary outpatient services ~~treatment~~ order authorizes the licensed service provider to require the individual to receive services that ~~undergo such treatment as~~ will benefit him or her, including services ~~treatment~~ at any licensable service component of a licensed service provider.

(4) The court may not order involuntary outpatient services if the service provider certifies to the court that the recommended services are not available. The service provider must document notify the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(5) If the court orders involuntary outpatient services, a copy of the order must be sent to the managing entity within 1 working day after it is received from the court. Documents may be submitted electronically though existing data systems, if applicable. After the order for outpatient services is issued, the service provider and the patient may modify provisions of the treatment plan. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if appointed, agrees, the service provider shall send notice of the modification to the court. Any material modification of the treatment plan which is contested by the patient or the guardian advocate, if applicable, must be approved or disapproved by the court.

Section 32. Section 397.6971, Florida Statutes, is amended to read:

397.6971 Early release from involuntary outpatient services ~~substance abuse treatment~~.—

(1) At any time before ~~prior to~~ the end of the 60-day

involuntary outpatient services ~~treatment~~ period, or ~~prior to~~ the end of any extension granted pursuant to s. 397.6975, an individual receiving ~~admitted for~~ involuntary outpatient services ~~treatment~~ may be determined eligible for discharge to the most appropriate referral or disposition for the individual when any of the following apply:

(a) The individual no longer meets the criteria for involuntary admission and has given his or her informed consent to be transferred to voluntary treatment status.~~;~~

(b) If the individual was admitted on the grounds of likelihood of infliction of physical harm upon himself or herself or others, such likelihood no longer exists.~~; or~~

(c) If the individual was admitted on the grounds of need for assessment and stabilization or treatment, accompanied by inability to make a determination respecting such need~~, either~~:

1. Such inability no longer exists; or

2. It is evident that further treatment will not bring about further significant improvements in the individual's condition.~~;~~

(d) The individual is no longer in need of services.~~; or~~

(e) The director of the service provider determines that the individual is beyond the safe management capabilities of the provider.

(2) Whenever a qualified professional determines that an individual admitted for involuntary outpatient services qualifies ~~treatment is ready~~ for early release under ~~for any of the reasons listed in~~ subsection (1), the service provider shall immediately discharge the individual~~,~~ and must notify all persons specified by the court in the original treatment order.

Section 33. Section 397.6975, Florida Statutes, is amended to read:

397.6975 Extension of involuntary outpatient services ~~substance abuse treatment~~ period.—

(1) Whenever a service provider believes that an individual who is nearing the scheduled date of his or her release from involuntary outpatient services ~~treatment~~ continues to meet the criteria for involuntary outpatient services ~~treatment~~ in s. 397.693, a petition for renewal of the involuntary outpatient services ~~treatment~~ order may be filed with the court at least 10 days before the expiration of the court-ordered outpatient services ~~treatment~~ period. The court shall immediately schedule a hearing to be held not more than 15 days after filing of the petition. The court shall provide the copy of the petition for renewal and the notice of the hearing to all parties to the proceeding. The hearing is conducted pursuant to s. 397.6957.

(2) If the court finds that the petition for renewal of the involuntary outpatient services ~~treatment~~ order should be granted, it may order the respondent to receive ~~undergo~~ involuntary outpatient services ~~treatment~~ for a period not to exceed an additional 90 days. When the conditions justifying involuntary outpatient services ~~treatment~~ no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary outpatient services ~~treatment~~ continue to exist after an additional 90 days of service ~~additional treatment~~, a new petition requesting renewal of the involuntary outpatient services ~~treatment~~ order may be filed pursuant to this section.

(3) Within 1 court working day after the filing of a

petition for continued involuntary outpatient services, the court shall appoint the regional conflict counsel to represent the respondent, unless the respondent is otherwise represented by counsel. The clerk of the court shall immediately notify the regional conflict counsel of such appointment. The regional conflict counsel shall represent the respondent until the petition is dismissed or the court order expires or the respondent is discharged from involuntary outpatient services. Any attorney representing the respondent shall have access to the respondent, witnesses, and records relevant to the presentation of the respondent's case and shall represent the interests of the respondent, regardless of the source of payment to the attorney.

(4) Hearings on petitions for continued involuntary outpatient services shall be before the circuit court. The court may appoint a general or special master to preside at the hearing. The procedures for obtaining an order pursuant to this section shall be in accordance with s. 397.697.

(5) Notice of hearing shall be provided to the respondent or his or her counsel. The respondent and the respondent's counsel may agree to a period of continued outpatient services without a court hearing.

(6) The same procedure shall be repeated before the expiration of each additional period of outpatient services.

(7) If the respondent has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the respondent's competence.

Section 34. Section 397.6977, Florida Statutes, is amended to read:

397.6977 Disposition of individual upon completion of involuntary outpatient services ~~substance abuse treatment~~.—At the conclusion of the 60-day period of court-ordered involuntary outpatient services ~~treatment~~, the respondent ~~individual~~ is automatically discharged unless a motion for renewal of the involuntary outpatient services ~~treatment~~ order has been filed with the court pursuant to s. 397.6975.

Section 35. Section 397.6978, Florida Statutes, is created to read:

397.6978 Guardian advocate; patient incompetent to consent; substance abuse disorder.—

(1) The administrator of a receiving facility or addictions receiving facility may petition the court for the appointment of a guardian advocate based upon the opinion of a qualified professional that the patient is incompetent to consent to treatment. If the court finds that a patient is incompetent to consent to treatment and has not been adjudicated incapacitated and that a guardian with the authority to consent to mental health treatment has not been appointed, it may appoint a guardian advocate. The patient has the right to have an attorney represent him or her at the hearing. If the person is indigent, the court shall appoint the office of the regional conflict counsel to represent him or her at the hearing. The patient has the right to testify, cross-examine witnesses, and present witnesses. The proceeding shall be recorded electronically or stenographically, and testimony must be provided under oath. One of the qualified professionals authorized to give an opinion in support of a petition for involuntary placement, as described in s. 397.675 or s. 397.6981, must testify. A guardian advocate

must meet the qualifications of a guardian contained in part IV of chapter 744. The person who is appointed as a guardian advocate must agree to the appointment.

(2) The following persons are prohibited from appointment as a patient's guardian advocate:

(a) A professional providing clinical services to the individual under this part.

(b) The qualified professional who initiated the involuntary examination of the individual, if the examination was initiated by a qualified professional's certificate.

(c) An employee, an administrator, or a board member of the facility providing the examination of the individual.

(d) An employee, an administrator, or a board member of the treatment facility providing treatment of the individual.

(e) A person providing any substantial professional services to the individual, including clinical services.

(f) A creditor of the individual.

(g) A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of injunction is temporary or final, and for which the individual was the petitioner.

(h) A person subject to an injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046, whether the order of injunction is temporary or final, and for which the individual was the petitioner.

(3) A facility requesting appointment of a guardian advocate must, before the appointment, provide the prospective guardian advocate with information about the duties and responsibilities of guardian advocates, including information

about the ethics of medical decisionmaking. Before asking a guardian advocate to give consent to treatment for a patient, the facility must provide to the guardian advocate sufficient information so that the guardian advocate can decide whether to give express and informed consent to the treatment. Such information must include information that demonstrates that the treatment is essential to the care of the patient and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. If possible, before giving consent to treatment, the guardian advocate must personally meet and talk with the patient and the patient's physician. If that is not possible, the discussion may be conducted by telephone. The decision of the guardian advocate may be reviewed by the court, upon petition of the patient's attorney, the patient's family, or the facility administrator.

(4) In lieu of the training required for guardians appointed pursuant to chapter 744, a guardian advocate shall attend at least a 4-hour training course approved by the court before exercising his or her authority. At a minimum, the training course must include information about patient rights, the diagnosis of substance abuse disorders, the ethics of medical decisionmaking, and the duties of guardian advocates.

(5) The required training course and the information to be supplied to prospective guardian advocates before their appointment must be developed by the department, approved by the chief judge of the circuit court, and taught by a court-approved organization, which may include, but need not be limited to, a community college, a guardianship organization, a local bar association, or The Florida Bar. The training course may be web-

based, provided in video format, or other electronic means but must be capable of ensuring the identity and participation of the prospective guardian advocate. The court may waive some or all of the training requirements for guardian advocates or impose additional requirements. The court shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian advocate, the duties assigned to the guardian advocate, and the needs of the patient.

(6) In selecting a guardian advocate, the court shall give preference to the patient's health care surrogate, if one has already been designated by the patient. If the patient has not previously designated a health care surrogate, the selection shall be made, except for good cause documented in the court record, from among the following persons, listed in order of priority:

(a) The patient's spouse.

(b) An adult child of the patient.

(c) A parent of the patient.

(d) The adult next of kin of the patient.

(e) An adult friend of the patient.

(f) An adult trained and willing to serve as the guardian advocate for the patient.

(7) If a guardian with the authority to consent to medical treatment has not already been appointed, or if the patient has not already designated a health care surrogate, the court may authorize the guardian advocate to consent to medical treatment as well as substance abuse disorder treatment. Unless otherwise limited by the court, a guardian advocate with authority to

consent to medical treatment has the same authority to make health care decisions and is subject to the same restrictions as a proxy appointed under part IV of chapter 765. Unless the guardian advocate has sought and received express court approval in a proceeding separate from the proceeding to determine the competence of the patient to consent to medical treatment, the guardian advocate may not consent to:

(a) Abortion.

(b) Sterilization.

(c) Electroshock therapy.

(d) Psychosurgery.

(e) Experimental treatments that have not been approved by a federally approved institutional review board in accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56.

The court must base its authorization on evidence that the treatment or procedure is essential to the care of the patient and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. In complying with this subsection, the court shall follow the procedures set forth in subsection (1).

(8) The guardian advocate shall be discharged when the patient is discharged from an order for involuntary outpatient services or involuntary inpatient placement or when the patient is transferred from involuntary to voluntary status. The court or a hearing officer shall consider the competence of the patient as provided in subsection (1) and may consider an involuntarily placed patient's competence to consent to treatment at any hearing. Upon sufficient evidence, the court

may restore, or the hearing officer may recommend that the court restore, the patient's competence. A copy of the order restoring competence or the certificate of discharge containing the restoration of competence shall be provided to the patient and the guardian advocate.

Section 36. Paragraph (a) of subsection (3) 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.—

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455(16) ~~s. 394.455(9)~~ and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and

informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to the department concerning that child.

Section 37. Paragraph (e) of subsection (5) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting

in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not

disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(42) ~~s. 397.311(41)~~. Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their

service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined before ~~prior to~~ program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

Section 38. Paragraph (c) of subsection (2) of section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(c)1. A receiving facility shall give notice of the whereabouts of a minor who is being involuntarily held for examination pursuant to s. 394.463 to the minor's parent, guardian, caregiver, or guardian advocate, in person or by telephone or other form of electronic communication, immediately after the minor's arrival at the facility. The facility may delay notification for no more than 24 hours after the minor's arrival if the facility has submitted a report to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect and if the facility deems a delay in notification to be in the minor's best interest.

2. The receiving facility shall attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until the receiving facility receives confirmation from the parent, guardian, caregiver, or guardian advocate, verbally, by telephone or other form of electronic communication, or by

recorded message, that notification has been received. Attempts to notify the parent, guardian, caregiver, or guardian advocate must be repeated at least once every hour during the first 12 hours after the minor's arrival and once every 24 hours thereafter and must continue until such confirmation is received, unless the minor is released at the end of the 72-hour examination period, or until a petition for involuntary services ~~placement~~ is filed with the court pursuant to s. 394.463(2)(g) ~~s. 394.463(2)(i)~~. The receiving facility may seek assistance from a law enforcement agency to notify the minor's parent, guardian, caregiver, or guardian advocate if the facility has not received within the first 24 hours after the minor's arrival a confirmation by the parent, guardian, caregiver, or guardian advocate that notification has been received. The receiving facility must document notification attempts in the minor's clinical record.

Section 39. Subsection (3) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(6), (8), (34), (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~;

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a professional as defined in s. 394.455(6), (8), (34), (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491.

Section 40. Subsection (5) of section 394.496, Florida

Statutes, is amended to read:

394.496 Service planning.—

(5) A professional as defined in s. 394.455(6), (8), (34), (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 41. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(23)(a)4., 397.311(23)(a)1., and 394.455(41) ~~ss. 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(26)~~, respectively.

Section 42. Subsection (8) of section 397.405, Florida Statutes, is amended to read:

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

(8) A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit religious organization or denomination providing any of the licensed service components itemized under s. 397.311(23) ~~s. 397.311(22)~~ is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious, spiritual, or ecclesiastical in nature.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician or physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced registered nurse practitioner licensed under part I of chapter 464, who provides substance abuse treatment, so long as the physician, physician assistant, psychologist, psychotherapist, or advanced registered nurse practitioner does not represent to the public that he or she is a licensed service provider and does not provide services to individuals pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 43. Subsections (1) and (5) of section 397.407, Florida Statutes, are amended to read:

397.407 Licensure process; fees.—

(1) The department shall establish the licensure process to include fees and categories of licenses and must prescribe a fee range that is based, at least in part, on the number and complexity of programs listed in s. 397.311(23) ~~s. 397.311(22)~~ which are operated by a licensee. The fees from the licensure of service components are sufficient to cover at least 50 percent of the costs of regulating the service components. The department shall specify a fee range for public and privately

funded licensed service providers. Fees for privately funded licensed service providers must exceed the fees for publicly funded licensed service providers.

(5) The department may issue probationary, regular, and interim licenses. The department shall issue one license for each service component that is operated by a service provider and defined pursuant to s. 397.311(23) ~~s. 397.311(22)~~. The license is valid only for the specific service components listed for each specific location identified on the license. The licensed service provider shall apply for a new license at least 60 days before the addition of any service components or 30 days before the relocation of any of its service sites. Provision of service components or delivery of services at a location not identified on the license may be considered an unlicensed operation that authorizes the department to seek an injunction against operation as provided in s. 397.401, in addition to other sanctions authorized by s. 397.415. Probationary and regular licenses may be issued only after all required information has been submitted. A license may not be transferred. As used in this subsection, the term "transfer" includes, but is not limited to, the transfer of a majority of the ownership interest in the licensed entity or transfer of responsibilities under the license to another entity by contractual arrangement.

Section 44. Section 397.416, Florida Statutes, is amended to read:

397.416 Substance abuse treatment services; qualified professional.—Notwithstanding any other provision of law, a person who was certified through a certification process

recognized by the former Department of Health and Rehabilitative Services before January 1, 1995, may perform the duties of a qualified professional with respect to substance abuse treatment services as defined in this chapter, and need not meet the certification requirements contained in s. 397.311(31) ~~s. 397.311(30)~~.

Section 45. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a ~~mental health~~ treatment facility ~~facilities~~ as defined in s. 394.455(50) ~~by s. 394.455(32)~~.

Section 46. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) "Drug rehabilitation program" means a service provider, established pursuant to s. 397.311(40) ~~s. 397.311(39)~~, that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to s. 397.311(40) ~~s. 397.311(39)~~.

Section 47. Subsection (7) of section 744.704, Florida Statutes, is amended to read:

744.704 Powers and duties.—

(7) A public guardian may ~~shall~~ not commit a ward to a ~~mental health~~ treatment facility, as defined in s. 394.455(50) ~~s. 394.455(32)~~, without an involuntary placement proceeding as provided by law.

Section 48. Paragraph (a) of subsection (2) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review any records available to determine if the potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic

violence, and therefore is prohibited from purchasing a firearm;

3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred; or

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court or as provided in sub-sub-subparagraph b.(II), and as a result is prohibited by state or federal law from purchasing a firearm.

a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient services ~~placement~~ as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a

mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution; or

(II) Notwithstanding sub-sub-subparagraph (I), voluntary admission to a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under s. 394.463, where each of the following conditions have been met:

(A) An examining physician found that the person is an imminent danger to himself or herself or others.

(B) The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient services ~~treatment~~ would have been filed under s. 394.463(2)(g) ~~s. 394.463(2)(i)4.~~, or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment before ~~prior to~~ a court hearing on the petition.

(C) Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06 and the person acknowledged such notice in writing, in substantially the following form:

"I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to

receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

(D) A judge or a magistrate has, pursuant to sub-sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.

c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

(I) Except as provided in sub-sub-subparagraph (II), clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of the subject.

(II) For persons committed to a mental institution pursuant

to sub-sub-subparagraph b.(II), within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgment must be filed by the administrator of the receiving or treatment facility, as defined in s. 394.455, with the clerk of the court for the county in which the involuntary examination under s. 394.463 occurred. No fee shall be charged for the filing under this sub-sub-subparagraph. The clerk must present the records to a judge or magistrate within 24 hours after receipt of the records. A judge or magistrate is required and has the lawful authority to review the records ex parte and, if the judge or magistrate determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, to order that the record be submitted to the department. If a judge or magistrate orders the submittal of the record to the department, the record must be submitted to the department within 24 hours.

d. A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in this paragraph, may petition the circuit court that made the adjudication or commitment, or the court that ordered that the record be submitted to the department pursuant to sub-sub-subparagraph c.(II), for relief from the firearm disabilities imposed by such adjudication or commitment. A copy of the petition shall be served on the state attorney for the county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner

may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability granted under this sub-subparagraph has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.

e. Upon receipt of proper notice of relief from firearm disabilities granted under sub-subparagraph d., the department shall delete any mental health record of the person granted relief from the automated database of persons who are prohibited

from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

f. The department is authorized to disclose data collected pursuant to this subparagraph to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose this data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license pursuant to s. 790.06(10). When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether the potential buyer or transferee is the same person as the subject of the record. Photographs and any other data that could confirm or negate identity must be made available to the department for such purposes, notwithstanding any other provision of state law to the contrary. Any such information that is made confidential or exempt from disclosure by law shall retain such confidential or exempt status when transferred to the department.

Section 49. This act shall take effect July 1, 2016.

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 Appropriations

BILL:	CS/SB 12
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Senator Garcia and others
SUBJECT:	Mental Health and Substance Abuse
DATE:	February 22, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 12 addresses Florida's system for the delivery of behavioral health services. The bill provides for mental health services for children, parents, and others seeking custody of children involved in dependency court proceedings. The bill creates a coordinated system of care to be provided either by a community or a region for those suffering from mental illness or substance use disorder through a "No Wrong Door" system of single access points.

The Agency for Health Care Administration (AHCA) and the Department of Children and Families (DCF) are directed to modify licensure requirements to create an option for a single, consolidated license to provide both mental health and substance use disorder services. Additionally, the AHCA and the DCF are directed to develop a plan to increase federal funding for behavioral health care.

To the extent possible, the bill aligns the legal processes, timelines, and processes for assessment, evaluation, and receipt of available services of the Baker Act (mental illness) and Marchman Act (substance abuse) to assist individuals in recovery and reduce readmission to the system.

The duties and responsibilities of the DCF are revised to set performance measures and standards for managing entities[1] and to enter into contracts with the managing entities that support efficient and effective administration of the behavioral health system and ensure accountability for performance. The duties and responsibilities of managing entities are revised accordingly. Additionally, the bill would allow behavioral health organizations to be eligible to bid for managing entity contracts under certain circumstances.

The bill expands the membership of the Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee, allows not-for-profit community providers or managing entities to apply for grants, and creates a grant review and selection committee to select grant recipients.

Under the bill, Medicaid managed care plans are required to work toward integration and coordination of primary care and behavioral health services for Medicaid recipients.

A person who holds a provisional license in clinical social work, marriage and family therapy, or mental health counseling may not apply for intern registration in the same profession once the intern registration expires in five years without obtaining full licensure under the bill.

The bill has an indeterminate fiscal impact.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Mental Health and Substance Abuse

Mental illness creates enormous social and economic costs.[2] Unemployment rates for persons with mental disorders are high relative to the overall population.[3] People with severe mental illness have exceptionally high rates of unemployment, between 60 percent and 100 percent.[4] Mental illness increases a person's risk of homelessness in America threefold.[5] Studies show that approximately 33 percent of our nation's homeless live with a serious mental disorder, such as schizophrenia, for which they are not receiving treatment.[6] Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment and leads to future re-offenses.[7]

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[1] *See* s. 394.9082, F.S. A managing entity is a not-for-profit corporation organized in Florida which is under contract with the DCF on a regional basis to manage the day-to-day operational delivery of behavioral health services through an organized system of care and a network of providers who are contracted with the managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services related to behavioral health.
[2] Mental Illness: The Invisible Menace, *Economic Impact* http://www.mentalmenace.com/economicimpact.php
[3] Mental Illness: The Invisible Menace, *More impacts and facts* http://www.mentalmenace.com/impactsfacts.php
[4] *Id.*
[5] Family Guidance Center, *How does Mental Illness Impact Rates of Homelessness?* (February 4, 2014) *available at* http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/
[6] *Id.*
[7] *Id.*

According to the National Alliance on Mental Illness (NAMI), approximately 50 percent of individuals with severe mental health disorders are affected by substance abuse.[8] NAMI also estimates that 29 percent of all people diagnosed as mentally ill abuse alcohol or other drugs.[9] When mental health disorders are left untreated, substance abuse is likely to increase. When substance abuse increases, mental health symptoms often increase as well or new symptoms may be triggered. This could also be due to discontinuation of taking prescribed medications or the contraindications for substance abuse and mental health medications. When taken with other medications, mental health medications can become less effective.[10]

Behavioral Health Managing Entities

In 2008, the Legislature required the Department of Children and Families (DCF) to implement a system of behavioral health managing entities that would serve as regional agencies to manage and pay for mental health and substance abuse services.[11] Prior to this time, the DCF, through its regional offices, contracted directly with behavioral health service providers. The Legislature found that a management structure that places the responsibility for publicly-financed behavioral health treatment and prevention services within a single private, nonprofit entity at the local level, would promote improved access to care, promote service continuity, and provide for more efficient and effective delivery of substance abuse and mental health services. There are currently seven managing entities across the state.[12] The managing entities are required to be not-for-profit organizations and were awarded contracts by DCF through the competitive procurement process. The current managing entity contracts were awarded for an initial five-year term with a renewal option of up to five years based on satisfactory performance. All seven managing entities contracts have been or will be renewed for five years as of July 1, 2016.[13]

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.[14] The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

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[8] Donna M. White, LPCI, CACP, Psych Central.com, *Living with Co-Occurring Mental & Substance Abuse Disorders,* (October 2, 2013) *available at* http://psychcentral.com/blog/archives/2013/10/02/living-with-co-occurring-mental-substance-abuse-disorders/

[9] *Id.*

[10] *Id.*

[11] *See* s. 394.9082, F.S., as created by Chapter 2008-243, Laws of Fla.

[12] Department of Children and Families website, http://www.myflfamilies.com/service-programs/substance-abuse/managing-entities, (last visited Jan. 11, 2016).

[13] Telephone discussion between DCF contract management staff and staff of the Senate Committee on Children, Families, and Elder Affairs, Feb, 19, 2016.

[14] Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

Marchman Act

In 1993, the Legislature adopted the Hal S. Marchman Alcohol and Other Drug Services Act. The Marchman Act provides a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services. Services must be provided in the least restrictive environment to promote long-term recovery. The Marchman Act includes various protections and rights of patients served.

Transportation to a Facility

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.[15]

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.[16]

The Marchman Act allows law enforcement officers, however, to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to provide if necessary transfer of the detainee to an appropriate licensed service provider with an available bed.[17] However, the Baker Act prohibits the detention in jail of a mentally ill person if he or she has not been charged with a crime.[18]

Involuntary Admission to a Facility

Criteria for Involuntary Admission

The Marchman Act provides that a person meets the criteria for involuntary admission if a good-faith reason exists to believe that the person is substance-impaired and, because of the impairment:

- Has lost the power of self-control with respect to substance abuse; and either
  - Has inflicted, threatened to or attempted to inflict self-harm; or
  - Is in need of services and due to the impairment, judgment is so impaired that the person is incapable of appreciating the need for services.[19]

[15] Section 397.6795, F.S.
[16] Section 394.462(1)(f) and (g), F.S.
[17] Section 397.6772(1), F.S.
[18] Section 394.459(1), F.S.
[19] Section 397.675, F.S.

Protective Custody

A person who meets the criteria for involuntary admission under the Marchman Act may be taken into protective custody by a law enforcement officer.[20] The person may consent to have the law enforcement officer transport the person to his or her home, a hospital, or a licensed detoxification or addictions receiving facility.[21] If the person does not consent, the law enforcement officer may transport the person without using unreasonable force.[22]

Time Limits

A critical 72-hour period applies under both the Marchman Act and the Baker Act. Under the Marchman Act, a person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.[23]

The Baker Act provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.[24] Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next working day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume 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.[25]

Under the Marchman Act, if the court grants the petition for involuntary admission, the person may be admitted for a period of five days to a facility for involuntary assessment and stabilization.[26] If the facility needs more time, the facility may request a seven-day extension from the court.[27] Based on the involuntary assessment, the facility may retain the person pending a court decision on a petition for involuntary treatment.[28]

Under the Baker Act, the court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.[29] The petitioner must show, by clear and convincing evidence, all available less-restrictive treatment alternatives are inappropriate and that the individual:

[20] Section 397.677, F.S.
[21] Section 397.6771, F.S.
[22] Section 397.6772(1), F.S.
[23] Section 397.6773(1) and (2), F.S.
[24] Section 394.463(2)(f), F.S.
[25] Section 394.463(2)(i)4., F.S.
[26] Section 397.6811, F.S.
[27] Section 397.6821, F.S.
[28] Section 397.6822, F.S.
[29] Sections 394.4655(6) and 394.467(6), F.S.

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect that 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.[30]

Social Work, Therapy and Counseling Interns

In Florida, an individual may register as an intern in clinical social work, marriage and family therapy, or mental health counseling. Registering as an intern enables an individual to gain the required postgraduate or post-master's clinical experience that is required for full licensure. Currently, 1,500 hours of face-to-face psychotherapy is required, which may not be accrued in fewer than 100 weeks.[31]

An applicant seeking registration as an intern must:[32]
- Submit the application form and the nonrefundable fee;
- Complete the education requirements;
- Submit an acceptable supervision plan for meeting the practicum, internship, or field work required for licensure that was not satisfied by graduate studies; and
- Identify a qualified supervisor.

Currently, an intern may renew his or her registration every biennium, with no limit on the number of times a registration may be renewed.

A provisional license allows individual practice, under supervision of a licensed mental health professional, while not meeting all of the clinical experience requirements. Individuals must meet minimum coursework requirements, and possess the appropriate graduate degree. A provisional license is valid for two years.[33]

Suitability Assessments for Children in the Child Welfare System

Current law provides a process for assessing a child in the legal custody of the DCF for suitability for residential mental health treatment. This assessment must be conducted by a qualified evaluator and evaluate whether the child appears to have an emotional disturbance serious enough to require treatment. The child must have the treatment explained to him or her.[34]

[30] Section 394.467(1), F.S.
[31] Rule 67B4-2.001, F.A.C.
[32] Section 491.005, F.S.
[33] Section 491.0046, F.S. and Rule 64B-3.0075, F.A.C.
[34] Section 39.407, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 29.004, F.S., to allow courts to use state revenue to provide case management services such as service referral, monitoring, and tracking for mental health programs under s. 394, F.S.

Section 2 amends s. 39.001(6), F.S., to include mental health treatment in dependency court services and directs the state to contract with mental health service providers for such services.

Section 3 amends s. 39.407, F.S., to allow a Medicaid managed care plan that may be financially responsible for a child's placement in a residential treatment center to receive a copy of the evaluation and suitability assessment performed by a qualified evaluator.

Section 4 amends s. 39.507(10), F.S., to allow a dependency court to order a person requesting custody of a child to submit to a mental health or substance abuse disorder assessment or evaluation, require participation of such person in a mental health program or a treatment-based drug court program, and to oversee the progress and compliance with treatment by the person who has custody or is requesting custody of a child.

Section 5 amends s. 39.521(1)(b), F.S., to authorize a court, with jurisdiction of a child that has been adjudicated dependent, to require the person who has custody or is requesting custody of the child to submit to a mental illness or substance abuse disorder assessment or evaluation, to require the person to participate in and comply with the mental health program or drug court program, and to oversee the progress and compliance by the person who has custody or is requesting custody of a child.

Section 6 amends s. 394.455, F.S., to add, update, or revise definitions as appropriate.

Section 7 amends s. 394.4573, F.S., to create a coordinated system of care in the context of the No Wrong Door model which is defined as a delivery system of health care services to persons with mental health or substance abuse disorders, or both, which optimizes access to care, regardless of the entry point to the system.

The bill also defines a coordinated system of care to mean the full array of behavioral and related services in a region or community offered by all service providers, whether under contract with the managing entity or another method of community partnership or mutual agreement.

Additionally, the Department of Children and Families (DCF) is required to submit, on or before October 1 of each year, an annual assessment of the behavioral health services in the state to the Governor and the Legislature. The assessment must include comparison of the status and performance of behavioral health systems, the capacity of contracted services providers to meet estimated needs, the degree to which services are offered in the least restrictive and most appropriate therapeutic environment, and the scope of system-wide accountability activities used to monitor patient outcomes and measure continuous improvement of the behavioral health system.

The bill authorizes the DCF, subject to a specific appropriation, to award system improvement grants to managing entities based on the submission of detailed plans to enhance services, coordination of services, or a performance measurement in accordance with the No Wrong Door model. The grants must be awarded through a performance-based contract that links payments to documented and measurable system improvements.

The essential elements of a coordinated system of care under the bill must include community interventions, a designated receiving system that consists of one or more facilities serving a defined geographic area, transportation, crisis services, case management, including intensive case management, and various other services.

Section 8 amends s. 394.4597(2)(d) and (e), F.S., to specify the persons who are prohibited from being named as a patient's representative.

Section 9 amends s. 394.4598(2) through (7), F.S., to specify the persons who are prohibited from appointment as a patient's guardian advocate when a court has determined that a person is incompetent to consent to treatment but the person has not been adjudicated incapacitated. The bill also sets out the training requirements for persons appointed as guardian advocates. Public and professional guardians are not included in the exemption of persons providing substantial professional services to act as a patient's guardian advocate.

Section 10 amends s. 394.462, F.S., to direct that a transportation plan must be developed and implemented in each county or, if applicable, counties that intend to share a transportation plan. The plan must specify methods of transport to a facility within the designated receiving system and may delegate responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan must ensure that persons meeting the criteria for involuntary assessment and evaluation pursuant to s. 394.463 and 397.675 will be transported. For the transportation of a voluntary or involuntary patient to a treatment facility, the plan must specify how the hospitalized patient will be transported to, from, and between facilities.

Section 11 amends s. 394.463(2), F.S., to allow a circuit or county court to enter an ex parte order stating that a person appears to meet the criteria for involuntary examination. The ex parte order must be based on written or oral sworn testimony that includes specific facts supporting the findings. Facilities accepting patients based on ex parte orders must send a copy of the order to the managing entity in its region the next working day. A facility admitting a person for involuntary examination who is not accompanied by an ex parte order must notify the DCF and the managing entity the next working day.

The bill also adds language that a person may not be held for involuntary examination for more than 72 hours without specified actions being taken.

Section 12 amends s. 394.4655, F.S., to allow a court to order a person to involuntary outpatient services, upon a finding by clear and convincing evidence, that the person meets the criteria specified. The recommendation by the administrator of a facility of a person for involuntary outpatient services must be supported by two qualified professionals, both of whom have personally examined the person within the preceding 72 hours. A court may not order services in a proposed treatment plan which are not available. The service provider must notify the

managing entity as to the availability of the requested services, and the managing entity must document its efforts to obtain the requested services. The recommendation for involuntary outpatient services by an administrator of a facility must be supported by the opinion of two qualified professionals.

When a petition for involuntary outpatient services is filed, a hearing is held, and the court must appoint the public defender to represent the person who is the subject of the petition. The state attorney in the circuit in which the person is located shall represent the state as the real party in interest and be provided access to the person's clinical records and witnesses. The state attorney is also authorized to independently evaluate the sufficiency and appropriateness of the petition.

Section 13 amends s. 394.467, F.S., to add to the criteria for involuntary inpatient placement for mental illness the present threat of substantial physical or mental harm to a person's well-being. The bill prohibits a court from ordering an individual with traumatic brain injury or dementia who lacks a co-occurring mental illness to be involuntarily placed in a treatment facility.

When a petition for involuntary inpatient placement is filed, a hearing is held, and the court must appoint the public defender to represent the person who is the subject of the petition. The state attorney in the circuit in which the person is located shall represent the state as the real party in interest and be provided access to the person's clinical records and witnesses. The state attorney is also authorized to independently evaluate the sufficiency and appropriateness of the petition.

Section 14 amends s. 394.46715, F.S., to provide the DCF rulemaking authority.

Section 15 amends 2. 394.656, F.S., to convert the Statewide Grant Review Committee to the Statewide Grant Policy Committee. The Policy Committee will consist of the existing members of the Review Committee and will have 10 additional members. The Policy Committee will serve as the advisory body to review policy and funding issues that help reduce the impact of persons with mental illnesses and substance abuse disorders on communities. The DCF is required to create a grant review selection committee which will be responsible for evaluating grant applications and selecting recipients.

The bill authorizes the DCF to require, at its discretion, an applicant for a grant to conduct sequential intercept mapping for a project. The bill defines sequential intercept mapping as a process for reviewing a local community's mental health, substance abuse, criminal justice, and related systems and identifying points of interceptions where interventions may be made to prevent an individual with a substance use disorder or mental illness from penetrating further into the criminal justice system.

Section 16 creates s. 394.761, F.S., to direct the DCF, in coordination with the managing entities, to compile detailed documentation of the cost and reimbursements for Medicaid-covered services provided to Medicaid-eligible individuals by providers of behavioral health services that are also funded through the DCF. The DCF's documentation, along with a report of general revenue funds supporting behavioral health services that are not spent as matching funds for federal programs or otherwise required under federal regulations, must be submitted to the Agency for Health Care Administration (AHCA) by December 31, 2016. Copies of the report

must also be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives. If the report presents clear evidence that Medicaid reimbursements are less than the costs of providing the services, the AHCA and the DCF will prepare and submit any budget amendments necessary to use unmatched general revenue funds in the 2016-2017 fiscal year to draw additional federal funding to increase Medicaid funding for behavioral health service providers receiving the unmatched general revenue. Such payments must be made to providers in accordance with federal law and regulations.

Section 17 amends s. 394.875, F.S., to direct the DCF and the AHCA, by January 1, 2017, to modify licensure rules and procedures to create an option for a single, consolidated license for a provider who offers multiple types of mental health and substance abuse services regulated under chs. 394 and 397, F.S.

Section 18 amends s. 394.9082, F.S., to revise and update the duties and responsibilities of the managing entities and the DCF and to provide definitions, contracting requirements, and accountability measures.

The DCF's duties and responsibilities are revised to include the designation of facilities into the receiving system developed by one or more counties; contract with the managing entities; specify data reporting and use of shared data systems; develop strategies to divert persons with mental illness or substance abuse disorders from the criminal and juvenile justice system; support the development and implementation of a coordinated system of care to require providers receiving state funds through a direct contract with the DCF to work with the managing entity to coordinate the provision of behavioral health services; set performance measures and standards for managing entities; develop a unique identifier for clients receiving services; and coordinate procedures for referral and admission of patients to, and discharge from, state treatment facilities.

This section sets out the DCF's duties regarding its contracts with the managing entities. The contracts must support efficient and effective administration of the behavioral health system and ensure accountability for performance. The DCF must first attempt to contract with not-for-profit organizations to serve as managing entities. Under certain circumstances, the DCF may contract with a managed behavioral health organization. The DCF may continue its contract with a managing entity for up to five years, including any and all renewals and extensions, if it is determined that the managing entity has made progress toward the implementation of a coordinated system of care in its geographic region.

The revised and updated duties and responsibilities of the managing entities under the bill include conducting an assessment of community behavioral health care needs in each managing entity's geographic area. The assessment must be updated annually and include, at a minimum, information the DCF needs for its annual report to the Governor and Legislature. Managing entities must also develop local resources by pursuing third-party payments for services, applying for grants, and other methods to ensure services are available and accessible; provide assistance to counties to develop a designated receiving system and a transportation plan; enter into cooperative agreements with local homeless councils and organizations to address the homelessness of persons suffering from a behavioral health crisis; provide or contract for case management; and collaborate with local criminal and juvenile justice systems to divert persons

with mental illness or substance abuse disorders, or both, from the criminal and juvenile justice systems.

Section 19 amends s. 397.311, F.S., to create a definition for "involuntary services", "informed consent", and revise the definition of "qualified professional."

Section 20 amends s. 397.675, F.S., to revise the criteria for assessment, stabilization, and involuntary treatment for persons with a substance abuse or co-occurring mental health disorder to include that without care or treatment, the person is likely to suffer from neglect or to refuse to care for himself or herself and that neglect or refusal poses a real and present threat of substantial harm to his or her well-being and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or is likely to inflict, physical harm on himself or herself, or another.

Section 21 amends s. 397.679, F.S., to expand the types of professionals who may execute a certificate for application for emergency admission of a person to a hospital or licensed detoxification facility to include a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's level certified addictions professional if the certification is specific to substance abuse disorders.

Section 22 amends s. 397.6791, F.S., to expand the types of professionals who may initiate a certificate for emergency assessment or admission of a person who may meet the criteria for substance abuse disorder to include a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's level certified addictions professional if the certification is specific to substance abuse disorders

Section 23 amends s. 397.6793, F.S., to revise the criteria for a person to be examined or assessed to include a reasonable belief that without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself and that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being. The professional's certificate authorizing the involuntary admission of a person is valid for seven days after issuance.

Section 24 amends s. 397.6795, F.S., to allow a person's spouse or guardian, or a law enforcement officer, to deliver a person named in a professional's certificate for emergency admission to a hospital or licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization.

Section 25 amends s. 397.681, F.S., to specify that a court clerk may not charge a filing fee for the filing of a petition for involuntary assessment and stabilization.

Section 26 amends s. 397.6811(1), F.S., to allow a petition for assessment and stabilization to be filed by a person who has direct personal knowledge of a person's substance abuse disorder.

Section 27 amends s. 397.6814, F.S., to remove the requirement that a petition for involuntary assessment and stabilization contain a statement regarding the person's ability to afford an attorney. This section also directs that a fee may not be charged for the filing of a petition pursuant to this section.

Section 28 amends s. 397.6819, F.S., to allow a licensed service provider to admit a person for a period not to exceed 5 days unless a petition for involuntary outpatient services has been initiated pending further order of the court.

Section 29 amends s. 397.695, F.S., to provide for the filing of a petition for involuntary outpatient services and the professionals that must support such a recommendation. If the person has been stabilized and no longer meets the criteria for involuntary assessment and stabilization, he or she must be released while waiting for the hearing. The service provider must prepare certain reports and a treatment plan, including certification to the court that the recommended services are available. If the services are unavailable, the petition may not be filed with the court.

Section 30 amends s. 397.6951, F.S., to amend the content requirements of the petition for involuntary outpatient services to include the person's history of failure to comply with treatment requirements, a factual allegation that the person is unlikely to voluntarily participate in the recommended services, and a factual allegation that the person is in need of the involuntary outpatient services.

Section 31 amends s. 397.6955, F.S., to update the duties of the court upon the filing of a petition for involuntary outpatient services by including the requirement to schedule a hearing within five days unless a continuance is granted.

Section 32 amends s. 397.6957, F.S., to update the requirements of the court to hear and review all relevant evidence at a hearing for involuntary outpatient services, including the requirement that the petitioner has the burden of proving by clear and convincing evidence that the respondent has a history of lack of compliance with treatment for substance abuse, is unlikely to voluntarily participate in the recommended treatment, and that, without services, is likely to suffer from neglect or tor refuse to care for himself or herself. One of the qualified professionals that executed the involuntary outpatient services certificate must be a witness at the hearing.

Section 33 amends s. 397.697, F.S., to allow courts to order involuntary services when the court finds the conditions have been proven by clear and convincing evidence; however, the court cannot order involuntary services if the recommended services are not available. The bill allows for the court to order involuntary services and removes the term "outpatient" from the type of services that may be provided.

Section 34 amends s. 397.6971, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary services. The bill removes the term "outpatient" from the type of services that may be provided.

Section 35 amends s. 397.6975, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary services. The bill removes the term "outpatient" from the type of services that may be provided.

Section 36 amends s. 397.6977, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary services. The bill removes the term "outpatient" from the type of services that may be provided.

Section 37 creates s. 397.6978, F.S., to allow for the appointment of a guardian advocate for a person determined incompetent to consent to treatment. The bill lists the persons prohibited from being appointed the patient's guardian advocate. Public guardians and professional guardians are excluded from the persons that are exempt from appointment as an individual's guardian advocate.

Section 38 amends s. 409.967, F.S., to direct Medicaid managed care plans to provide services in a manner that integrates behavioral health services and primary care.

Section 39 amends s. 409.973, F.S., to direct each Medicaid managed care plan to work with the managing entity in its area to enhance integration and coordination of primary care and behavioral health services for Medicaid recipients.

Section 40 amends s. 491.0045, F.S., to provide that an intern registration is valid for five years. Registrations issued on or before March 31, 2017, expire March 31, 2022 and may not be renewed or reissued. Registrations issued after March 31, 2017, expire 60 months after the date issued. Subsequent intern registrations may not be issued unless the candidate has passed the theory and practice examination.

Repeals

This bill repeals a number of obsolete and duplicative sections of statute, as follows:

- Section 394.4674, F.S., which requires the DCF to complete a deinstitutionalization plan. This section was enacted in 1980 and is obsolete following further developments in federal law.
- Section 394.4985, F.S., which requires the DCF's regions to develop and maintain an information and referral network. This duplicates other requirements.
- Section 394.745, F.S., which requires an annual report to the Legislature of compliance of substance abuse and mental health treatment providers under contract with the DCF.
- Section 397.331, F.S., which provides definitions and legislative intent related to state drug control.
- Sections 397.6772, 397.697 and 397.801, F.S., requiring the Departments of Education, Corrections, Law Enforcement and Children and Families to each designate substance abuse impairment coordinators, and for the DCF to also designate full-time substance abuse impairment coordinators in each of its regions.
- Section 397.811, F.S., which expresses the Legislature's intent that substance abuse prevention an early intervention programs be funded.

- Section 397.821, F.S., authorizing each judicial circuit to establish juvenile substance abuse impairment prevention and early intervention councils to identify needs. Managing entities now perform these duties.
- Section 397.901, F.S., authorizing the DCF to establish prototype juvenile addiction receiving facilities. This section was enacted in 1993 and these projects are completed.
- Section 397.93, F.S., specifying target populations for children's substance abuse services, which duplicates other statutory requirements. This duplicates other provisions of law.
- Section 397.94, F.S., requiring the DCF's regions to plan and provide for information and referral services regarding children's substance abuse services.
- Section 397.951, F.S., requiring the DCF to ensure that treatment providers use sanctions provided elsewhere in law to keep children in substance abuse treatment.
- Sections 397.97 and 397.98, F.S., relating to the Children's Network of Care Demonstration Models, authorizing their operation for four years. These were originally established in 1999.

Section 41 amends s. 39.407, F.S., to correct cross-references.

Section 42 amends s. 212.055, F.S., to correct cross-references.

Section 43 amends s. 394.4599, F.S., to correct cross-references.

Section 44 amends s. 394.495(3), F.S., to correct cross-references.

Section 45 amends s. 394.496(5), F.S., to correct cross-references.

Section 46 amends s. 394.9085(6), F.S., to correct cross-references.
Section 47 amends s. 397.321, F.S., to correct cross-references.
Section 48 amends s. 397.405(8), F.S., to correct cross-references.

Section 49 amends s. 397.407(1) and (5), F.S., to correct cross-references.

Section 50 amends s. 397.416, F.S., to correct cross-references.

Section 51 amends s. 397.4871, F.S., to correct cross-references.

Section 52 amends s. 409.966, F.S., to correct cross-references.

Section 53 amends s. 409.972(1)(b), F.S., to correct cross-references.

Section 54 amends s. 440.102(1)(d) and (g), F.S., to correct cross-references.

Section 55 amends s. 744.704(7), F.S., to correct cross-references.

Section 56 amends s. 790.065(2)(a), F.S., to correct cross-references.

Section 57 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Since the bill requires a transportation plan to be developed and implemented in each county or, if applicable, in counties that intend to share a transportation plan, it falls within the purview of Section 18(a), Article VII, Florida Constitution, which provides that cities and counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. None of the exceptions apply. However, subsection (d) provides an exemption from this prohibition for laws determined to have an "insignificant fiscal impact." The fiscal impact of this requirement is indeterminate because the number of rides needed by residents cannot be predicted. If the costs exceed the insignificant threshold, the bill will require a 2/3 vote of the membership of each house and a finding of an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/SB 12 prohibits a filing fee being charged for Marchman Act petitions; however, this does not create a fiscal impact on the clerks of court or the state court system because no fees are currently assessed.[35]

B. Private Sector Impact:

Persons appointed by the court as guardian advocates for individuals in need of behavioral health services will have increased training requirements under the bill.

Behavioral health managing entities that have made progress towards the implementation of a coordinated care system in its region may have its contract continued for no more than five years by the DCF.

Affected clinical social work, marriage and family therapist, and mental health counselor interns will have to meet new minimum qualifications for practice and will experience new requirements for supervision, which will have an indeterminate impact on their ability to practice. Intern registrations will be valid for five years but may not be renewed unless the intern has passed the applicable theory and practice examination. The affected

[35] E-mail received from Florida Court Clerks & Comptroller, Nov. 6, 2015, and on file in the Senate Committee on Children, Families & Elder Affairs.

interns will also be relieved of having to pay a biennial fee to renew their intern registrations but will be required to pass the applicable theory and practice examination.

C. Government Sector Impact:

State

To the extent that the bill encourages the use of involuntary outpatient services rather than inpatient placement, the state would experience a positive fiscal impact. The cost of care in state treatment facilities is more expensive than community based behavioral health care. The amount of this potential cost savings is indeterminate.

Under the bill, the DCF has revised duties to review local behavioral health care plans, write or revise rules, and award any grants for implementation of the No Wrong Door policy. Similar administrative duties are currently performed by the DCF so these revised duties are not expected to create a fiscal impact.

Local

Local governments must revise their transportation plans for acute behavioral health care under the Baker Act and Marchman Act. The bill requires that as part of the transportation plan for the No Wrong Door policy, the local government must describe how transportation will be provided between the single point of entry for behavioral health care and other treatment providers or settings as appropriate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 29.004, 39.001, 39.407, 39.507, 39.521, 394.455, 394.4573, 394.4597, 394.4598, 394.462, 394.463, 394.4655, 394.467, 394.46715, 394.656, 394.761, 394.875, 394.9082, 397.311, 397.321, 397.4871, 397.675, 397.679, 397.6791, 397.6793, 397.6795, 397.681, 397.6811, 397.6814, 397.6819, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, 397.6977, 397.6978, 39.407, 212.055, 394.4599, 394.495, 394.496, 394.9085, 397.405, 397.407, 397.416, 409.966, 409.967, 409.972, 440.102, 491.0045, 744.704, and 790.065.

This bill creates the following sections of the Florida Statutes: 394.761 and 397.6978.

This bill repeals the following sections of the Florida Statutes: 394.4674, 394.4985, 394.745, 397.331, 397.6772, 397.697, 397.801, 397.811, 397.821, 397.901, 397.93, 397.94, 397.951, 397.97, and 397.98.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on February 18, 2016:
The CS:

- Expands the membership of the Criminal Justice, Mental health, and Substance Abuse Statewide Grant Review Committee; allows not-for-profit community providers or managing entities to apply for grants; and creates a grant review and selection committee that will select grant recipients;
- Allows the state attorney to have access to clinical records and witnesses when representing the state in Baker Act hearings;
- Revises the DCF's contracting requirements for managing entities; allows managed behavioral health organizations to be eligible to bid for managing entity contracts under certain circumstances;
- Requires Medicaid managed care plans to work toward integration and coordination of primary care and behavioral health services for Medicaid recipients; and
- Requires intern registration for clinical social work, marriage and family therapists, or mental health counselors to be valid for five years, and subsequent intern registrations may not be issued unless the candidate has passed the theory and practice examination required under current law.

B. Amendments:

None.

By Senator Garcia

38-01698B-16 201612__

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 29.004, F.S.; including services provided to treatment-based mental health programs within case management funded from state revenues as an element of the state courts system; amending s. 39.001, F.S.; providing legislative intent regarding mental illness for purposes of the child welfare system; amending s. 39.507, F.S.; providing for consideration of mental health issues and involvement in treatment-based mental health programs in adjudicatory hearings and orders; amending s. 39.521, F.S.; providing for consideration of mental health issues and involvement in treatment-based mental health programs in disposition hearings; amending s. 394.455, F.S.; defining terms; revising definitions; amending s. 394.4573, F.S.; requiring the Department of Children and Families to submit a certain assessment to the Governor and the Legislature by a specified date; redefining terms; providing essential elements of a coordinated system of care; providing requirements for the department's annual assessment; authorizing the department to award certain grants; deleting duties and measures of the department regarding continuity of care management systems; amending s. 394.4597, F.S.; revising the prioritization of health care surrogates to be selected for involuntary patients; specifying certain persons who are prohibited from being selected as an individual's representative; amending s. 394.4598, F.S.; specifying certain persons who are prohibited from being appointed as a person's guardian advocate; amending s. 394.462, F.S.; requiring that

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counties develop and implement transportation plans; providing requirements for the plans; revising requirements for transportation to a receiving facility and treatment facility; deleting exceptions to such requirements; amending s. 394.463, F.S.; authorizing county or circuit courts to enter ex parte orders for involuntary examinations; requiring a facility to provide copies of ex parte orders, reports, and certifications to managing entities and the department, rather than the Agency for Health Care Administration; requiring the managing entity and department to receive certain orders, certificates, and reports; requiring the department to provide such documents to the Agency for Health Care Administration; requiring certain individuals to be released to law enforcement custody; providing exceptions; amending s. 394.4655, F.S.; providing for involuntary outpatient services; requiring a service provider to document certain inquiries; requiring the managing entity to document certain efforts; making technical changes; amending s. 394.467, F.S.; revising criteria for involuntary inpatient placement; requiring a facility filing a petition for involuntary inpatient placement to send a copy to the department and managing entity; revising criteria for a hearing on involuntary inpatient placement; revising criteria for a procedure for continued involuntary inpatient services; specifying requirements for a certain waiver of the patient's attendance at a hearing; requiring

the court to consider certain testimony and evidence regarding a patient's incompetence; amending s. 394.46715, F.S.; revising rulemaking authority of the department; creating s. 394.761, F.S.; authorizing the agency and the department to develop a plan for revenue maximization; requiring the plan to be submitted to the Legislature by a certain date; amending s. 394.875, F.S.; requiring the department to modify licensure rules and procedures to create an option for a single, consolidated license for certain providers by a specified date; amending s. 394.9082, F.S.; providing a purpose for behavioral health managing entities; revising definitions; providing duties of the department; requiring the department to revise its contracts with managing entities; providing duties for managing entities; deleting provisions relating to legislative findings and intent, service delivery strategies, essential elements, reporting requirements, and rulemaking authority; amending s. 397.311, F.S.; defining the term "involuntary services"; revising the definition of the term "qualified professional"; conforming a cross-reference; amending s. 397.675, F.S.; revising the criteria for involuntary admissions due to substance abuse or co-occurring mental health disorders; amending s. 397.679, F.S.; specifying the licensed professionals who may complete a certificate for the involuntary admission of an individual; amending s. 397.6791, F.S.; providing a list of professionals

authorized to initiate a certificate for an emergency assessment or admission of a person with a substance abuse disorder; amending s. 397.6793, F.S.; revising the criteria for initiation of a certificate for an emergency admission for a person who is substance abuse impaired; amending s. 397.6795, F.S.; revising the list of persons who may deliver a person for an emergency assessment; amending s. 397.681, F.S.; prohibiting the court from charging a fee for involuntary petitions; amending s. 397.6811, F.S.; revising the list of persons who may file a petition for an involuntary assessment and stabilization; amending s. 397.6814, F.S.; prohibiting a fee from being charged for the filing of a petition for involuntary assessment and stabilization; amending s. 397.6819, F.S.; revising the responsibilities of service providers who admit an individual for an involuntary assessment and stabilization; amending s. 397.695, F.S.; authorizing certain persons to file a petition for involuntary outpatient services of an individual; providing procedures and requirements for such petitions; amending s. 397.6951, F.S.; requiring that certain additional information be included in a petition for involuntary outpatient services; amending s. 397.6955, F.S.; requiring a court to fulfill certain additional duties upon the filing of petition for involuntary outpatient services; amending s. 397.6957, F.S.; providing additional requirements for a hearing on a petition for involuntary outpatient

services; amending s. 397.697, F.S.; authorizing a court to make a determination of involuntary outpatient services; prohibiting a court from ordering involuntary outpatient services under certain circumstances; requiring the service provider to document certain inquiries; requiring the managing entity to document certain efforts; requiring a copy of the court's order to be sent to the department and managing entity; providing procedures for modifications to such orders; amending s. 397.6971, F.S.; establishing the requirements for an early release from involuntary outpatient services; amending s. 397.6975, F.S.; requiring the court to appoint certain counsel; providing requirements for hearings on petitions for continued involuntary outpatient services; requiring notice of such hearings; amending s. 397.6977, F.S.; conforming provisions to changes made by the act; creating s. 397.6978, F.S.; providing for the appointment of guardian advocates if an individual is found incompetent to consent to treatment; providing a list of persons prohibited from being appointed as an individual's guardian advocate; providing requirements for a facility requesting the appointment of a guardian advocate; requiring a training course for guardian advocates; providing requirements for the training course; providing requirements for the prioritization of individuals to be selected as guardian advocates; authorizing certain guardian advocates to consent to medical treatment;

providing exceptions; providing procedures for the discharge of a guardian advocate; amending ss. 39.407, 212.055, 394.4599, 394.495, 394.496, 394.9085, 397.405, 397.407, 397.416, 409.972, 440.102, 744.704, and 790.065, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (10) of section 29.004, Florida Statutes, to read:

29.004 State courts system.—For purposes of implementing s. 14, Art. V of the State Constitution, the elements of the state courts system to be provided from state revenues appropriated by general law are as follows:

(10) Case management. Case management includes:

(e) Service referral, coordination, monitoring, and tracking for mental health programs under chapter 394.

Case management may not include costs associated with the application of therapeutic jurisprudence principles by the courts. Case management also may not include case intake and records management conducted by the clerk of court.

Section 2. Subsection (6) of section 39.001, Florida Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and screening.—

(6) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.—

(a) The Legislature recognizes that early referral and

comprehensive treatment can help combat mental illness and substance abuse disorders in families and that treatment is cost-effective.

(b) The Legislature establishes the following goals for the state related to mental illness and substance abuse treatment services in the dependency process:

1. To ensure the safety of children.

2. To prevent and remediate the consequences of mental illness and substance abuse disorders on families involved in protective supervision or foster care and reduce the occurrences of mental illness and substance abuse disorders, including alcohol abuse or other related disorders, for families who are at risk of being involved in protective supervision or foster care.

3. To expedite permanency for children and reunify healthy, intact families, when appropriate.

4. To support families in recovery.

(c) The Legislature finds that children in the care of the state's dependency system need appropriate health care services, that the impact of mental illnesses and substance abuse on health indicates the need for health care services to include treatment for mental health and substance abuse disorders for ~~services to~~ children and parents where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's dependency system must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related mental illness and substance

abuse problems.

(d) It is the intent of the Legislature to encourage the use of the mental health programs established under chapter 394 and the drug court program model established under ~~by~~ s. 397.334 and authorize courts to assess children and persons who have custody or are requesting custody of children where good cause is shown to identify and address mental illnesses and substance abuse disorders ~~problems~~ as the court deems appropriate at every stage of the dependency process. Participation in treatment, including a treatment-based mental health court program or a treatment-based drug court program, may be required by the court following adjudication. Participation in assessment and treatment before ~~prior to~~ adjudication is ~~shall be~~ voluntary, except as provided in s. 39.407(16).

(e) It is therefore the purpose of the Legislature to provide authority for the state to contract with mental health service providers and community substance abuse treatment providers for the development and operation of specialized support and overlay services for the dependency system, which will be fully implemented and used as resources permit.

(f) Participation in a treatment-based mental health court program or a ~~the~~ treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult, but is intended to enable these agencies to better meet their needs through shared responsibility and resources.

Section 3. Subsection (10) of section 39.507, Florida Statutes, is amended to read:

39.507 Adjudicatory hearings; orders of adjudication.—

(10) After an adjudication of dependency, or a finding of dependency where adjudication is withheld, the court may order a person who has custody or is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health program established under chapter 394 or a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including a treatment-based mental health court program or a ~~the~~ treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subsection may be made only upon good cause shown. This subsection does not authorize placement of a child with a person seeking custody, other than the parent or legal custodian, who requires mental health or substance abuse disorder treatment.

Section 4. Paragraph (b) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court,

if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(b) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental illness or substance abuse disorder assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health program established under chapter 394 or a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including a treatment-based mental health court program or a ~~the~~ treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a

finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must ~~shall~~ set forth the powers of the custodian of the child and ~~shall~~ include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, ~~no~~ further judicial reviews are not required if~~, so long as~~ permanency has been established for

the child.

Section 5. Section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, ~~unless the context clearly requires otherwise,~~ the term:

(1) "Access center" or "drop-off center" means a facility staffed by medical, behavioral, and substance abuse professionals which provides emergency screening and evaluation for mental health or substance abuse disorders and may provide transportation to an appropriate facility if an individual is in need of more intensive services.

(2) "Addictions receiving facility" means a secure, acute care facility that, at a minimum, provides emergency screening, evaluation, and short-term stabilization services; is operated 24 hours per day, 7 days per week; and is designated by the department to serve individuals found to have substance abuse impairment who qualify for services under this part.

(3)~~(1)~~ "Administrator" means the chief administrative officer of a receiving or treatment facility or his or her designee.

(4) "Adult" means an individual who is 18 years of age or older or who has had the disability of nonage removed under chapter 743.

(5) "Advanced registered nurse practitioner" means any person licensed in this state to practice professional nursing who is certified in advanced or specialized nursing practice under s. 464.012.

~~(2) "Clinical psychologist" means a psychologist as defined in s. 490.003(7) with 3 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 under this part.~~

(6) ~~(3)~~ "Clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by ~~a~~ facility staff which pertains to the patient's hospitalization or treatment.

(7) ~~(4)~~ "Clinical social worker" means a person licensed as a clinical social worker under s. 491.005 or s. 491.006 ~~chapter 491~~.

(8) ~~(5)~~ "Community facility" means a ~~any~~ community service provider that contracts ~~contracting~~ with the department to furnish substance abuse or mental health services under part IV of this chapter.

(9) ~~(6)~~ "Community mental health center or clinic" means a publicly funded, not-for-profit center that ~~which~~ contracts with the department for the provision of inpatient, outpatient, day treatment, or emergency services.

(10) ~~(7)~~ "Court," unless otherwise specified, means the circuit court.

(11) ~~(8)~~ "Department" means the Department of Children and Families.

(12) "Designated receiving facility" means a facility approved by the department which provides, at a minimum, emergency screening, evaluation, and short-term stabilization for mental health or substance abuse disorders, and which may

have an agreement with a corresponding facility for transportation and services.

(13) "Detoxification facility" means a facility licensed to provide detoxification services under chapter 397.

(14) "Electronic means" is a form of telecommunication which requires all parties to maintain visual as well as audio communication.

(15) ~~(9)~~ "Express and informed consent" means consent voluntarily given ~~in writing~~, by a competent person, after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(16) ~~(10)~~ "Facility" means any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have ~~a mental illness~~ or who have been diagnosed as having a mental illness or substance abuse impairment. The term ~~"Facility"~~ does not include a ~~any~~ program or an entity licensed under ~~pursuant to~~ chapter 400 or chapter 429.

(17) "Governmental facility" means a facility owned, operated, or administered by the Department of Corrections or the United States Department of Veterans Affairs.

(18) ~~(11)~~ "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated.

(19) ~~(12)~~ "Guardian advocate" means a person appointed by a

court to make decisions regarding mental health or substance abuse treatment on behalf of a patient who has been found incompetent to consent to treatment pursuant to this part. ~~The guardian advocate may be granted specific additional powers by written order of the court, as provided in this part.~~

(20)~~(13)~~ "Hospital" means a hospital ~~facility as defined in s. 395.002 and~~ licensed under chapter 395 and part II of chapter 408.

(21)~~(14)~~ "Incapacitated" means that a person has been adjudicated incapacitated pursuant to part V of chapter 744 and a guardian of the person has been appointed.

(22)~~(15)~~ "Incompetent to consent to treatment" means a state in which ~~that~~ a person's judgment is so affected by a ~~his or her~~ mental illness, a substance abuse impairment, or any medical or organic cause that he or she ~~the person~~ lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical, ~~or~~ mental health, or substance abuse treatment.

(23) "Involuntary examination" means an examination performed under s. 394.463 or s. 397.675 to determine whether a person qualifies for involuntary outpatient services or involuntary inpatient placement.

(24) "Involuntary services" means court-ordered outpatient services or inpatient placement for mental health treatment pursuant to s. 394.4655 or s. 394.467.

(25)~~(16)~~ "Law enforcement officer" has the same meaning as provided ~~means a law enforcement officer as defined~~ in s. 943.10.

(26) "Marriage and family therapist" means a person

licensed to practice marriage and family therapy under s. 491.005 or s. 491.006.

(27) "Mental health counselor" means a person licensed to practice mental health counseling under s. 491.005 or s. 491.006.

(28)~~(17)~~ "Mental health overlay program" means a mobile service that ~~which~~ provides an independent examination for voluntary admission ~~admissions~~ and a range of supplemental onsite services to persons with a mental illness in a residential setting such as a nursing home, an assisted living facility, or an adult family-care home~~,~~ or a nonresidential setting such as an adult day care center. Independent examinations provided ~~pursuant to this part~~ through a mental health overlay program must only be provided under contract with the department ~~for this service~~ or be attached to a public receiving facility that is also a community mental health center.

(29)~~(18)~~ "Mental illness" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. For the purposes of this part, the term does not include a developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

(30) "Minor" means an individual who is 17 years of age or younger and who has not had the disability of nonage removed pursuant to s. 743.01 or s. 743.015.

(31)~~(19)~~ "Mobile crisis response service" means a nonresidential crisis service ~~attached to a public receiving facility and~~ available 24 hours a day, 7 days a week, ~~through~~ which provides immediate intensive assessments and interventions, including screening for admission into a mental health receiving facility, an addictions receiving facility, or a detoxification facility, ~~take place~~ for the purpose of identifying appropriate treatment services.

(32)~~(20)~~ "Patient" means any person who is held or accepted for mental health or substance abuse treatment.

(33)~~(21)~~ "Physician" means a medical practitioner licensed under chapter 458 or chapter 459 ~~who has experience in the diagnosis and treatment of mental and nervous disorders~~ or a physician employed by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense ~~which qualifies as a receiving or treatment facility under this part~~.

(34) "Physician assistant" means a person licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental disorders.

(35)~~(22)~~ "Private facility" means any hospital or facility operated by a for-profit or not-for-profit corporation or association which ~~that~~ provides mental health or substance abuse services and is not a public facility.

(36)~~(23)~~ "Psychiatric nurse" means an advanced registered nurse practitioner certified under s. 464.012 who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's

clinical experience under the supervision of a physician.

(37)~~(24)~~ "Psychiatrist" means a medical practitioner licensed under chapter 458 or chapter 459 ~~who has primarily diagnosed and treated mental and nervous disorders~~ for at least ~~a period of not less than~~ 3 years, inclusive of psychiatric residency.

(38) "Psychologist" has the same meaning as provided in s. 490.003 or means a psychologist employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under this part.

(39)~~(25)~~ "Public facility" means a ~~any~~ facility that has contracted with the department to provide mental health or substance abuse services to all persons, regardless of ~~their~~ ability to pay, and is receiving state funds for such purpose.

(40) "Qualified professional" means a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; a psychiatrist licensed under chapter 458 or chapter 459; or a psychiatric nurse as defined in subsection (36).

(41)~~(26)~~ "Receiving facility" means any public or private facility designated by the department to receive and hold or refer, as appropriate, involuntary patients under emergency conditions ~~or~~ for mental health or substance abuse ~~psychiatric~~ evaluation and to provide ~~short-term~~ treatment or transportation to the appropriate service provider. The term does not include a county jail.

(42)~~(27)~~ "Representative" means a person selected to receive notice of proceedings during the time a patient is held in or admitted to a receiving or treatment facility.

(43)~~(28)(a)~~ "Restraint" means: ~~a physical device, method, or drug used to control behavior.~~

(a) A physical restraint, including ~~is~~ any manual method or physical or mechanical device, material, or equipment attached or adjacent to an ~~the~~ individual's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body. Physical restraint includes the physical holding of a person during a procedure to forcibly administer psychotropic medication. Physical restraint does not include physical devices such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests or for purposes of orthopedic, surgical, or other similar medical treatment, when used to provide support for the achievement of functional body position or proper balance, or when used to protect a person from falling out of bed.

(b) A drug or ~~used as a restraint is a~~ medication used to control a ~~the~~ person's behavior or to restrict his or her freedom of movement which ~~and~~ is not part of the standard treatment regimen of a person with a diagnosed mental illness ~~who is a client of the department. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint~~.

~~(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; or for purposes of orthopedic, surgical, or other similar medical~~

~~treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.~~

(44) "School psychologist" has the same meaning as in s. 490.003.

(45)~~(29)~~ "Seclusion" means the physical segregation ~~of a person in any fashion~~ or involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this part ~~chapter~~, the term does not mean isolation due to a person's medical condition or symptoms.

(46)~~(30)~~ "Secretary" means the Secretary of Children and Families.

(47) "Service provider" means a receiving facility, any facility licensed under chapter 397, a treatment facility, an entity under contract with the department to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced registered nurse practitioner, a psychiatric nurse, or a qualified professional as defined in this section.

(48) "Substance abuse impairment" means a condition involving the use of alcoholic beverages or any psychoactive or mood-altering substance in such a manner as to induce mental, emotional, or physical problems and cause socially dysfunctional behavior.

(49)~~(31)~~ "Transfer evaluation" means the process by which~~,~~ ~~as approved by the appropriate district office of the department, whereby~~ a person who is being considered for placement in a state treatment facility is ~~first~~ evaluated for appropriateness of admission to a state treatment ~~the~~ facility ~~by a community-based public receiving facility or by a community mental health center or clinic if the public receiving facility is not a community mental health center or clinic~~.

(50)~~(32)~~ "Treatment facility" means a ~~any~~ state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness or substance abuse disorders, including facilities of the United States Government, and any private facility designated by the department when rendering such services to a person pursuant to the provisions of this part. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.

(51) "Triage center" means a facility that is staffed by medical, behavioral, and substance abuse professionals who provide emergency screening and evaluation of individuals transported to the center by a law enforcement officer.

~~(33) "Service provider" means any public or private receiving facility, an entity under contract with the Department of Children and Families to provide mental health services, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a~~

~~psychiatric nurse as defined in subsection (23), or a community mental health center or clinic as defined in this part.~~

~~(34) "Involuntary examination" means an examination performed under s. 394.463 to determine if an individual qualifies for involuntary inpatient treatment under s. 394.467(1) or involuntary outpatient treatment under s. 394.4655(1).~~

~~(35) "Involuntary placement" means either involuntary outpatient treatment pursuant to s. 394.4655 or involuntary inpatient treatment pursuant to s. 394.467.~~

~~(36) "Marriage and family therapist" means a person licensed as a marriage and family therapist under chapter 491.~~

~~(37) "Mental health counselor" means a person licensed as a mental health counselor under chapter 491.~~

~~(38) "Electronic means" means a form of telecommunication that requires all parties to maintain visual as well as audio communication.~~

Section 6. Section 394.4573, Florida Statutes, is amended to read:

394.4573 Coordinated system of care; annual assessment; essential elements ~~Continuity of care management system~~; measures of performance; system improvement grants; reports.—On or before October 1 of each year, the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an assessment of the behavioral health services in this state in the context of the No-Wrong-Door model and standards set forth in this section. The department's assessment shall be based on both quantitative and qualitative data and must identify any significant regional

variations. The assessment must include information gathered from managing entities, service providers, law enforcement, judicial officials, local governments, behavioral health consumers and their family members, and the public.

(1) As used in ~~For the purposes of~~ this section:

(a) "Case management" means those direct services provided to a client in order to assess his or her ~~activities aimed at assessing client~~ needs, plan or arrange ~~planning~~ services, coordinate service providers, monitor ~~linking the service system to a client, coordinating the various system components, monitoring~~ service delivery, and evaluate patient outcomes ~~evaluating the effect of service delivery~~.

(b) "Case manager" means an individual who works with clients~~,~~ and their families and significant others~~,~~ to provide case management.

(c) "Client manager" means an employee of the managing entity or entity under contract with the managing entity ~~department~~ who is assigned to specific provider agencies and geographic areas to ensure that the full range of needed services is available to clients.

(d) "Coordinated system ~~Continuity~~ of care ~~management system~~" means ~~a system that assures, within available resources, that clients have access to~~ the full array of behavioral and related services in a region or community offered by all service providers, whether participating under contract with the managing entity or another method of community partnership or mutual agreement ~~within the mental health services delivery system~~.

(e) "No-Wrong-Door model" means a model for the delivery of

health care services to persons who have mental health or substance abuse disorders, or both, which optimizes access to care, regardless of the entry point to the behavioral health care system.

(2) The essential elements of a coordinated system of care include:

(a) Community interventions, such as prevention, primary care for behavioral health needs, therapeutic and supportive services, crisis response services, and diversion programs.

(b) A designated receiving system consisting of one or more facilities serving a defined geographic area and responsible for assessment and evaluation, both voluntary and involuntary, and treatment or triage for patients who present with mental illness, substance abuse disorder, or co-occurring disorders. The system must be authorized by each county or by several counties, planned through an inclusive process, approved by the managing entity, and documented through written memoranda of agreement or other binding arrangements. The designated receiving system may be organized in any of the following ways so long as it functions as a No-Wrong-Door model that responds to individual needs and integrates services among various providers:

1. A central receiving system, which consists of a designated central receiving facility that serves as a single entry point for persons with mental health or substance abuse disorders, or both. The designated receiving facility must be capable of assessment, evaluation, and triage or treatment for various conditions and circumstances.

2. A coordinated receiving system, which consists of

multiple entry points that are linked by shared data systems, formal referral agreements, and cooperative arrangements for care coordination and case management. Each entry point must be a designated receiving facility and must provide or arrange for necessary services following an initial assessment and evaluation.

3. A tiered receiving system, which consists of multiple entry points, some of which offer only specialized or limited services. Each service provider participating in the tiered receiving system must be classified as a designated receiving facility, a triage center, or an access center. All participating service providers must be linked by shared data systems, formal referral agreements, and cooperative arrangements for care coordination and case management. An accurate inventory of the participating service providers which specifies the capabilities and limitations of each provider must be maintained and made available at all times to all first responders in the service area.

(c) Transportation in accordance with a plan developed under s. 394.462.

(d) Crisis services, including mobile response teams, crisis stabilization units, addiction receiving facilities, and detoxification facilities.

(e) Case management, including intensive case management for individuals determined to be high-need or high-utilization individuals under s. 394.9082(2)(e).

(f) Outpatient services.

(g) Residential services.

(h) Hospital inpatient care.

(i) Aftercare and other post-discharge services.

(j) Medication assistance and management.

(k) Recovery support, including housing assistance and support for competitive employment, educational attainment, independent living skills development, family support and education, and wellness management and self-care.

(3) The department's annual assessment must compare the status and performance of the extant behavioral health system with the following standards and any other standards or measures that the department determines to be applicable.

(a) The capacity of the contracted service providers to meet estimated need when such estimates are based on credible evidence and sound methodologies.

(b) The extent to which the behavioral health system uses evidence-based practices and broadly disseminates the results of quality improvement activities to all service providers.

(c) The degree to which services are offered in the least restrictive and most appropriate therapeutic environment.

(d) The scope of systemwide accountability activities used to monitor patient outcomes and measure continuous improvement in the behavioral health system.

(4) Subject to a specific appropriation by the Legislature, the department may award system improvement grants to managing entities based on the submission of a detailed plan to enhance services, coordination, or performance measurement in accordance with the model and standards specified in this section. Such a grant must be awarded through a performance-based contract that links payments to the documented and measurable achievement of system improvements ~~The department is directed to implement a~~

~~continuity of care management system for the provision of mental health care, through the provision of client and case management, including clients referred from state treatment facilities to community mental health facilities. Such system shall include a network of client managers and case managers throughout the state designed to:~~

~~(a) Reduce the possibility of a client's admission or readmission to a state treatment facility.~~

~~(b) Provide for the creation or designation of an agency in each county to provide single intake services for each person seeking mental health services. Such agency shall provide information and referral services necessary to ensure that clients receive the most appropriate and least restrictive form of care, based on the individual needs of the person seeking treatment. Such agency shall have a single telephone number, operating 24 hours per day, 7 days per week, where practicable, at a central location, where each client will have a central record.~~

~~(c) Advocate on behalf of the client to ensure that all appropriate services are afforded to the client in a timely and dignified manner.~~

~~(d) Require that any public receiving facility initiating a patient transfer to a licensed hospital for acute care mental health services not accessible through the public receiving facility shall notify the hospital of such transfer and send all records relating to the emergency psychiatric or medical condition.~~

~~(3) The department is directed to develop and include in contracts with service providers measures of performance with~~

~~regard to goals and objectives as specified in the state plan. Such measures shall use, to the extent practical, existing data collection methods and reports and shall not require, as a result of this subsection, additional reports on the part of service providers. The department shall plan monitoring visits of community mental health facilities with other state, federal, and local governmental and private agencies charged with monitoring such facilities.~~

Section 7. Paragraphs (d) and (e) of subsection (2) of section 394.4597, Florida Statutes, are amended to read:

394.4597 Persons to be notified; patient's representative.—

(2) INVOLUNTARY PATIENTS.—

(d) When the receiving or treatment facility selects a representative, first preference shall be given to a health care surrogate, if one has been previously selected by the patient. If the patient has not previously selected a health care surrogate, the selection, except for good cause documented in the patient's clinical record, shall be made from the following list in the order of listing:

1. The patient's spouse.

2. An adult child of the patient.

3. A parent of the patient.

4. The adult next of kin of the patient.

5. An adult friend of the patient.

~~6. The appropriate Florida local advocacy council as provided in s. 402.166.~~

(e) The following persons are prohibited from selection as a patient's representative:

1. A professional providing clinical services to the

patient under this part.

2. The licensed professional who initiated the involuntary examination of the patient, if the examination was initiated by professional certificate.

3. An employee, an administrator, or a board member of the facility providing the examination of the patient.

4. An employee, an administrator, or a board member of a treatment facility providing treatment for the patient.

5. A person providing any substantial professional services to the patient, including clinical and nonclinical services.

6. A creditor of the patient.

7. A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of injunction is temporary or final, and for which the patient was the petitioner.

8. A person subject to an injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046, whether the order of injunction is temporary or final, and for which the patient was the petitioner ~~A licensed professional providing services to the patient under this part, an employee of a facility providing direct services to the patient under this part, a department employee, a person providing other substantial services to the patient in a professional or business capacity, or a creditor of the patient shall not be appointed as the patient's representative~~.

Section 8. Present subsections (2) through (7) of section 394.4598, Florida Statutes, are redesignated as subsections (3) through (8), respectively, a new subsection (2) is added to that section, and present subsections (3) and (4) of that section are

amended, to read:

394.4598 Guardian advocate.—

(2) The following persons are prohibited from appointment as a patient's guardian advocate:

(a) A professional providing clinical services to the patient under this part.

(b) The licensed professional who initiated the involuntary examination of the patient, if the examination was initiated by professional certificate.

(c) An employee, an administrator, or a board member of the facility providing the examination of the patient.

(d) An employee, an administrator, or a board member of a treatment facility providing treatment of the patient.

(e) A person providing any substantial professional services to the patient, including clinical and nonclinical services.

(f) A creditor of the patient.

(g) A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of injunction is temporary or final, and for which the patient was the petitioner.

(h) A person subject to an injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046, whether the order of injunction is temporary or final, and for which the patient was the petitioner.

(4) ~~(3)~~ In lieu of the training required of guardians appointed pursuant to chapter 744, ~~Prior to~~ a guardian advocate must attend at least a 4-hour training course approved by the court before exercising his or her authority~~, the guardian~~

~~advocate shall attend a training course approved by the court~~. At a minimum, this training course~~, of not less than 4 hours,~~ must include~~, at minimum,~~ information about ~~the~~ patient rights, psychotropic medications, the diagnosis of mental illness, the ethics of medical decisionmaking, and duties of guardian advocates. ~~This training course shall take the place of the training required for guardians appointed pursuant to chapter 744.~~

(5)~~(4)~~ The required training course and the information to be supplied to prospective guardian advocates before ~~prior to~~ their appointment ~~and the training course for guardian advocates~~ must be developed ~~and completed through a course developed~~ by the department, ~~and~~ approved by the chief judge of the circuit court, and taught by a court-approved organization, which~~.~~ ~~Court-approved organizations~~ may include, but is ~~are~~ not limited to, a community college ~~community or junior colleges~~, a guardianship organization ~~guardianship organizations~~, a ~~and the~~ local bar association, or The Florida Bar. The court may~~, in its discretion,~~ waive some or all of the training requirements for guardian advocates or impose additional requirements. The court shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian advocate, the duties assigned to the guardian advocate, and the needs of the patient.

Section 9. Section 394.462, Florida Statutes, is amended to read:

394.462 Transportation.—A transportation plan must be developed and implemented in each county in accordance with this section. A county may enter into a memorandum of understanding

with the governing boards of nearby counties to establish a shared transportation plan. When multiple counties enter into a memorandum of understanding for this purpose, the managing entity must be notified and provided a copy of the agreement. The transportation plan must specify methods of transport to a facility within the designated receiving system and may delegate responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan must ensure that individuals who meet the criteria for involuntary assessment and evaluation pursuant to ss. 394.463 and 397.675 will be transported. The plan may rely on emergency medical transport services or private transport companies as appropriate.

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to an appropriate facility within the designated receiving system ~~the nearest receiving facility~~ for examination.

(b)1. The designated law enforcement agency may decline to transport the person to a receiving facility only if:

a.~~1.~~ The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and

b.~~2.~~ The law enforcement agency and the emergency medical

transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.

2.~~3.~~ The entity providing transportation ~~jurisdiction designated by the county~~ may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From a private or public third-party payor ~~an insurance company, health care corporation, or other source~~, if the person receiving the transportation has applicable coverage ~~is covered by an insurance policy or subscribes to a health care corporation or other source for payment of such expenses~~.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(c) ~~(b)~~ A ~~Any~~ company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transport ~~transportation~~ of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport ~~transportation~~ of patients.

(d) ~~(c)~~ Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of ~~the~~ patients.

(e) ~~(d)~~ When a law enforcement officer takes custody of a

person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(f) ~~(c)~~ When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 or s. 397.675 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(g) ~~(f)~~ When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under this part, the law enforcement officer shall transport the person to an appropriate ~~the nearest receiving~~ facility within the designated receiving system for examination.

(h) ~~(g)~~ When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person must ~~shall~~ first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the appropriate ~~nearest public receiving~~ facility within the designated receiving system, which shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and

documents that it is unable to provide adequate security, but shall provide ~~mental health~~ examination and treatment to the person where he or she is held.

(i) ~~(h)~~ If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(j) ~~(i)~~ The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

(k) ~~(j)~~ The ~~nearest receiving~~ facility within the designated receiving system must accept persons brought by law enforcement officers, an emergency medical transport service, or a private transport company for involuntary examination.

(l) ~~(k)~~ Each law enforcement agency designated pursuant to paragraph (a) shall establish a policy that ~~develop a memorandum of understanding with each receiving facility within the law enforcement agency's jurisdiction which~~ reflects a single set of protocols approved by the managing entity for the safe and secure transportation ~~of the person~~ and transfer of custody of the person. ~~These protocols must also address crisis intervention measures.~~

(m) ~~(l)~~ When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to ~~receiving~~ facilities within the designated receiving system, such service or company

shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(n) ~~(m)~~ ~~Nothing in~~ This section may not ~~shall~~ be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with ~~the provisions of~~ s. 401.445.

(2) TRANSPORTATION TO A TREATMENT FACILITY.—

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting a voluntary or involuntary patient to a treatment facility, the transportation plan established by the governing board of the county or counties must specify how ~~in which~~ the hospitalized patient will be transported to, from, and between facilities in a ~~is hospitalized shall arrange for such required transportation and shall ensure the~~ safe and dignified manner ~~transportation of the patient~~. ~~The governing board of each county is authorized to contract with private transport companies for the transportation of such patients to and from a treatment facility.~~

(b) A ~~Any~~ company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport ~~transportation~~ of patients.

(c) A ~~Any~~ company that contracts with one or more counties

~~the governing board of a county~~ to transport patients in accordance with this section shall comply with the applicable rules of the department to ensure the safety and dignity of ~~the~~ patients.

(d) County or municipal law enforcement and correctional personnel and equipment may ~~shall~~ not be used to transport patients adjudicated incapacitated or found by the court to meet the criteria for involuntary placement pursuant to s. 394.467, except in small rural counties where there are no cost-efficient alternatives.

(3) TRANSFER OF CUSTODY.—Custody of a person who is transported pursuant to this part, along with related documentation, shall be relinquished to a responsible individual at the appropriate receiving or treatment facility.

~~(4) EXCEPTIONS.—An exception to the requirements of this section may be granted by the secretary of the department for the purposes of improving service coordination or better meeting the special needs of individuals. A proposal for an exception must be submitted by the district administrator after being approved by the governing boards of any affected counties, prior to submission to the secretary.~~

~~(a) A proposal for an exception must identify the specific provision from which an exception is requested; describe how the proposal will be implemented by participating law enforcement agencies and transportation authorities; and provide a plan for the coordination of services such as case management.~~

~~(b) The exception may be granted only for:~~

~~1. An arrangement centralizing and improving the provision of services within a district, which may include an exception to~~

~~the requirement for transportation to the nearest receiving facility;~~

~~2. An arrangement by which a facility may provide, in addition to required psychiatric services, an environment and services which are uniquely tailored to the needs of an identified group of persons with special needs, such as persons with hearing impairments or visual impairments, or elderly persons with physical frailties; or~~

~~3. A specialized transportation system that provides an efficient and humane method of transporting patients to receiving facilities, among receiving facilities, and to treatment facilities.~~

~~(c) Any exception approved pursuant to this subsection shall be reviewed and approved every 5 years by the secretary.~~

Section 10. Subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying~~, giving~~ the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings~~, written or oral~~. If other, less restrictive, means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent

of the court, shall take the person into custody and deliver him or her to an appropriate ~~the nearest receiving~~ facility within the designated receiving system for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A ~~No~~ fee may not ~~shall~~ be charged for the filing of an order under this subsection. Any ~~receiving~~ facility accepting the patient based on this order must send a copy of the order to the managing entity in the region and to the department ~~Agency for Health Care Administration~~ on the next working day. The order shall be valid only until the person is delivered to the appropriate facility ~~executed~~ or, ~~if not executed,~~ for the period specified in the order itself, whichever comes first. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the appropriate ~~nearest receiving~~ facility within the designated receiving system for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must ~~and the report shall~~ be made a part of the patient's clinical record. Any ~~receiving~~ facility accepting the patient based on this report must send a copy of the report to the department and the managing entity ~~Agency for Health Care Administration~~ on the next working day.

3. 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 has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other, less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, ~~such as voluntary appearance for outpatient evaluation,~~ a law enforcement officer shall take into custody the person named in the certificate ~~into custody~~ and deliver him or her to the appropriate ~~nearest receiving~~ facility within the designated receiving system for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any ~~receiving~~ facility accepting the patient based on this certificate must send a copy of the certificate to the managing entity and the department ~~Agency for Health Care Administration on~~ the next working day.

(b) A person may ~~shall~~ not be removed from any program or residential placement licensed under chapter 400 or chapter 429 and transported to a receiving facility for involuntary examination unless an ex parte order, a professional certificate, or a law enforcement officer's report is first prepared. If the condition of the person is such that preparation of a law enforcement officer's report is not practicable before removal, the report shall be completed as soon as possible after removal, but in any case before the person is transported to a receiving facility. A ~~receiving~~ facility admitting a person for involuntary examination who is not accompanied by the required ex parte order, professional

certificate, or law enforcement officer's report shall notify the managing entity and the department ~~Agency for Health Care Administration~~ of such admission by certified mail or by electronic means if available, by ~~no later than~~ the next working day. The provisions of this paragraph do not apply when transportation is provided by the patient's family or guardian.

(c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may serve and execute such order on any day of the week, at any time of the day or night.

(d) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order.

(e) The managing entity and the department ~~Agency for Health Care Administration~~ shall receive and maintain the copies of ex parte petitions and orders, involuntary outpatient services ~~placement~~ orders issued pursuant to s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467, professional certificates, and law enforcement officers' reports. These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. These documents shall be provided by the department to the Agency for Health Care Administration and used by the agency to ~~The agency shall~~ prepare annual reports analyzing the data obtained from these documents, without information identifying patients, and shall provide copies of reports to the department,

the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(f) A patient shall be examined by a physician or~~,~~ a psychologist ~~clinical psychologist,~~ or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a ~~receiving~~ facility without unnecessary delay to determine if the criteria for involuntary services are met. Emergency treatment may be provided ~~and may,~~ upon the order of a physician, if the physician determines ~~be given emergency treatment if it is determined~~ that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist or a psychologist ~~clinical psychologist or~~, ~~if the receiving facility is owned or operated by a hospital or health system, the release may also be approved by~~ a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis and treatment of mental illness ~~and nervous disorders and~~ after completion of an involuntary examination pursuant to this subsection. A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist. ~~However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.~~

(g) A person may not be held for involuntary examination for more than 72 hours from the time of his or her arrival at the facility. Based on the person's needs, one of the following

actions must be taken within the involuntary examination period:

1. The person must be released with the approval of a physician, psychiatrist, psychiatric nurse, or psychologist. However, if the examination is conducted in a hospital, an attending emergency department physician with experience in the diagnosis and treatment of mental illness may approve the release. The professional approving the release must have personally conducted the involuntary examination.

2. The person must be asked to give express and informed consent for voluntary admission if a physician, psychiatrist, psychiatric nurse, or psychologist has determined that the individual is competent to consent to treatment.

3. A petition for involuntary services must be completed and filed in the circuit court by the facility administrator. If electronic filing of the petition is not available in the county and the 72-hour period ends on a weekend or legal holiday, the petition must be filed by the next working day. If involuntary services are deemed necessary, the least restrictive treatment consistent with the optimum improvement of the person's condition must be made available.

(h) An individual discharged from a facility on a voluntary or an involuntary basis who is currently charged with a crime shall be released to the custody of a law enforcement officer, unless the individual has been released from law enforcement custody by posting of a bond, by a pretrial conditional release, or by other judicial release.

(i) ~~(g)~~ A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must

be examined by an appropriate ~~a receiving~~ facility within 72 hours. The 72-hour period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient services ~~placement~~ pursuant to s. 394.4655(1) or involuntary inpatient placement pursuant to s. 394.467(1), the patient may be offered voluntary placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary inpatient placement or involuntary outpatient services ~~placement~~ must be entered into the patient's clinical record. ~~Nothing in~~ This paragraph is not intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital before ~~prior to~~ stabilization if~~, provided~~ the requirements of s. 395.1041(3)(c) have been met.

(j) ~~(h)~~ One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist:

1. The patient must be examined by an appropriate ~~a designated receiving~~ facility and released; or

2. The patient must be transferred to a designated ~~receiving~~ facility in which appropriate medical treatment is available. However, the ~~receiving~~ facility must be notified of

the transfer within 2 hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist.

~~(i) Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:~~

~~1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;~~

~~2. The patient shall be released, subject to the provisions of subparagraph 1., for voluntary outpatient treatment;~~

~~3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient shall be admitted as a voluntary patient; or~~

~~4. A petition for involuntary placement shall be filed in the circuit court when outpatient or inpatient treatment is deemed necessary. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(3)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.~~

Section 11. Section 394.4655, Florida Statutes, is amended to read:

394.4655 Involuntary outpatient services ~~placement~~.—

(1) CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES

~~PLACEMENT.—~~A person may be ordered to involuntary outpatient services ~~placement~~ upon a finding of the court, by clear and convincing evidence, that the person meets all of the following criteria ~~by clear and convincing evidence~~:

(a) The person is 18 years of age or older.~~;~~

(b) The person has a mental illness.~~;~~

(c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.~~;~~

(d) The person has a history of lack of compliance with treatment for mental illness.~~;~~

(e) The person has:

1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or

2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months.~~;~~

(f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and ~~either he or she~~ has refused voluntary services ~~placement~~ for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary ~~purpose of placement for treatment~~ or ~~he or she~~ is unable to determine for himself or herself whether services are ~~placement is~~ necessary.~~;~~

(g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services ~~placement~~ in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1).~~,~~

(h) It is likely that the person will benefit from involuntary outpatient services. ~~placement; and~~

(i) All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

(2) INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a)1. A patient who is being recommended for involuntary outpatient services ~~placement~~ by the administrator of the ~~receiving~~ facility where the patient has been examined may be retained by the facility after adherence to the notice procedures provided in s. 394.4599. The recommendation must be supported by the opinion of two qualified professionals ~~a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist~~, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services ~~placement~~ are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a qualified professional ~~psychiatrist or clinical psychologist~~ is not available to provide the second opinion, the second opinion may be provided by a ~~licensed~~ physician who has postgraduate training and experience in diagnosis and treatment of mental ~~and nervous~~ disorders or by a psychiatric nurse. Any second opinion

authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means, including telemedicine. Such recommendation must be entered on an involuntary outpatient services ~~placement~~ certificate that authorizes the ~~receiving~~ facility to retain the patient pending completion of a hearing. The certificate must ~~shall~~ be made a part of the patient's clinical record.

2. If the patient has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the ~~receiving~~ facility while awaiting the hearing for involuntary outpatient services ~~placement~~. Before filing a petition for involuntary outpatient services ~~treatment~~, the administrator of the ~~a receiving~~ facility or a designated department representative must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient services ~~placement~~, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.

3. The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient services ~~placement~~ order. The service provider shall also provide a copy of the proposed treatment plan to the patient and the administrator of the ~~receiving~~ facility. The treatment plan must specify the

nature and extent of the patient's mental illness, address the reduction of symptoms that necessitate involuntary outpatient services ~~placement~~, and include measurable goals and objectives for the services ~~and treatment~~ that are provided to treat the person's mental illness and assist the person in living and functioning in the community or to prevent a relapse or deterioration. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the ~~treatment~~ plan must be deemed clinically appropriate by a physician, ~~clinical~~ psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed treatment plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition. The service provider must document its inquiry with the department and the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(b) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient services ~~placement~~, the administrator of the ~~treatment~~ facility may, before the expiration of the period during which the ~~treatment~~ facility is authorized to retain the patient, recommend involuntary outpatient services ~~placement~~. The recommendation must be

supported by the opinion of two qualified professionals ~~a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist~~, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services ~~placement~~ are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a qualified professional ~~psychiatrist or clinical psychologist~~ is not available to provide the second opinion, the second opinion may be provided by a ~~licensed~~ physician who has postgraduate training and experience in diagnosis and treatment of mental ~~and nervous~~ disorders or by a psychiatric nurse. Any second opinion authorized in this paragraph ~~subparagraph~~ may be conducted through a face-to-face examination, in person or by electronic means including telemedicine. Such recommendation must be entered on an involuntary outpatient services ~~placement~~ certificate, and the certificate must be made a part of the patient's clinical record.

(c)1. The administrator of the ~~treatment~~ facility shall provide a copy of the involuntary outpatient services ~~placement~~ certificate and a copy of the state mental health discharge form to a department representative in the county where the patient will be residing. For persons who are leaving a state mental health treatment facility, the petition for involuntary outpatient services ~~placement~~ must be filed in the county where the patient will be residing.

2. The service provider that will have primary responsibility for service provision shall be identified by the designated department representative before ~~prior to~~ the order

for involuntary outpatient services ~~placement~~ and must, before ~~prior to~~ filing a petition for involuntary outpatient services ~~placement~~, certify to the court whether the services recommended in the patient's discharge plan are available ~~in the local community~~ and whether the service provider agrees to provide those services. The service provider must develop with the patient, or the patient's guardian advocate, if appointed, a treatment or service plan that addresses the needs identified in the discharge plan. The plan must be deemed to be clinically appropriate by a physician, ~~clinical~~ psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker, as defined in this chapter, who consults with, or is employed or contracted by, the service provider.

3. If the service provider certifies that the services in the proposed treatment or service plan are not available, the petitioner may not file the petition. The service provider must document its inquiry with the department and the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(3) PETITION FOR INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a) A petition for involuntary outpatient services ~~placement~~ may be filed by:

1. The administrator of a receiving facility; or

2. The administrator of a treatment facility.

(b) Each required criterion for involuntary outpatient services ~~placement~~ must be alleged and substantiated in the

petition for involuntary outpatient services ~~placement~~. A copy of the certificate recommending involuntary outpatient services ~~placement~~ completed by two ~~a~~ qualified professionals ~~professional specified in subsection (2)~~ must be attached to the petition. A copy of the proposed treatment plan must be attached to the petition. Before the petition is filed, the service provider shall certify that the services in the proposed treatment plan are available. If the necessary services are not available ~~in the patient's local community to respond to the person's individual needs~~, the petition may not be filed. The service provider must document its inquiry with the department and the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(c) The petition for involuntary outpatient services ~~placement~~ must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside. When the petition has been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to the department, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel. A fee may not be charged for filing a petition under this subsection.

(4) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary outpatient services ~~placement~~, the court shall appoint the public defender to represent the person who is the subject of the petition,

unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of the appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary outpatient services ~~placement~~. An attorney who represents the patient must be provided ~~shall have~~ access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(5) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing. The continuance shall be for a period of up to 4 weeks.

(6) HEARING ON INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a)1. The court shall hold the hearing on involuntary outpatient services ~~placement~~ within 5 working days after the filing of the petition, unless a continuance is granted. The hearing must ~~shall~~ be held in the county where the petition is filed, must ~~shall~~ be as convenient to the patient as is consistent with orderly procedure, and must ~~shall~~ be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding.

2. The court may appoint a general or special master to preside at the hearing. One of the professionals who executed the involuntary outpatient services ~~placement~~ certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided by law ~~provide for one~~. The independent expert's report is ~~shall be~~ confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the person's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(b)1. If the court concludes that the patient meets the criteria for involuntary outpatient services ~~placement~~ pursuant to subsection (1), the court shall issue an order for involuntary outpatient services ~~placement~~. The court order shall be for a period of up to 90 days ~~6 months~~. However, an order for involuntary services in a state treatment facility may be for up to 6 months. The order must specify the nature and extent of the patient's mental illness. The order of the court and the treatment plan must ~~shall~~ be made part of the patient's clinical record. The service provider shall discharge a patient from involuntary outpatient services ~~placement~~ when the order expires or any time the patient no longer meets the criteria for

involuntary services ~~placement~~. Upon discharge, the service provider shall send a certificate of discharge to the court.

2. The court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service. The service provider must document its inquiry with the department and the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the department and the managing entity ~~Agency for Health Care Administration~~ by the service provider within 1 working day after it is received from the court. After the ~~placement~~ order for involuntary services is issued, the service provider and the patient may modify ~~provisions of~~ the treatment plan. For any material modification of the treatment plan to which the patient or, if one is appointed, the patient's guardian advocate agrees~~, if appointed, does agree~~, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable ~~appointed~~, must be approved or disapproved by the court consistent with subsection (2).

3. If, in the clinical judgment of a physician, the patient has failed or ~~has~~ refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a person may be

brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement pursuant to s. 394.467, the patient must be discharged from the ~~receiving~~ facility. The involuntary outpatient services ~~placement~~ order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services ~~placement~~ or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if applicable ~~appointed~~, agrees ~~does agree~~, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable ~~appointed~~, must be approved or disapproved by the court consistent with subsection (2).

(c) If, at any time before the conclusion of the initial hearing on involuntary outpatient services ~~placement~~, it appears to the court that the person does not meet the criteria for involuntary outpatient services ~~placement~~ under this section but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination under s. 394.463. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s.

397.6811. Thereafter, all proceedings are ~~shall be~~ governed by chapter 397.

(d) At the hearing on involuntary outpatient services ~~placement~~, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598. The guardian advocate shall be appointed or discharged in accordance with s. 394.4598.

(e) The administrator of the receiving facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient services ~~placement~~. Such documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a ~~clinical~~ psychologist or a clinical social worker.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT SERVICES ~~PLACEMENT~~.—

(a)1. If the person continues to meet the criteria for involuntary outpatient services ~~placement~~, the service provider shall, at least 10 days before the expiration of the period during which the treatment is ordered for the person, file in the county or circuit court a petition for continued involuntary outpatient services ~~placement~~. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.

2. The existing involuntary outpatient services ~~placement~~ order remains in effect until disposition on the petition for

continued involuntary outpatient services ~~placement~~.

3. A certificate shall be attached to the petition which includes a statement from the person's physician or ~~clinical~~ psychologist justifying the request, a brief description of the patient's treatment during the time he or she was receiving involuntarily services ~~placed~~, and an individualized plan of continued treatment.

4. The service provider shall develop the individualized plan of continued treatment in consultation with the patient or the patient's guardian advocate, if applicable ~~appointed~~. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued treatment to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.

(b) Within 1 court working day after the filing of a petition for continued involuntary outpatient services ~~placement~~, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the person until the petition is dismissed or the court order expires or the patient is discharged from involuntary outpatient services ~~placement~~. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(c) Hearings on petitions for continued involuntary outpatient services must ~~placement shall~~ be before the circuit court. The court may appoint a general or special master to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph must meet the requirements of ~~shall be in accordance with~~ subsection (6), except that the time period included in paragraph (1)(e) does not apply when ~~is not applicable in~~ determining the appropriateness of additional periods of involuntary outpatient services ~~placement~~.

(d) Notice of the hearing must ~~shall~~ be provided as set forth in s. 394.4599. The patient and the patient's attorney may agree to a period of continued outpatient services ~~placement~~ without a court hearing.

(e) The same procedure must ~~shall~~ be repeated before the expiration of each additional period the patient is placed in treatment.

(f) If the patient has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. Section 394.4598 governs the discharge of the guardian advocate if the patient's competency to consent to treatment has been restored.

Section 12. Section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary inpatient placement.—

(1) CRITERIA.—A person may be ordered for ~~placed in~~ involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

(a) He or she has a mental illness ~~is mentally ill~~ and because of his or her mental illness:

1.a. He or she has refused voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of inpatient placement for treatment; or

b. He or she is unable to determine for himself or herself whether inpatient placement is necessary; and

2.a. He or she is ~~manifestly~~ incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial physical or mental harm to his or her well-being; or

b. There is substantial likelihood that in the near future he or she will inflict serious bodily harm on self or others ~~himself or herself or another person~~, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available, less restrictive treatment alternatives that ~~which~~ would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

(2) ADMISSION TO A TREATMENT FACILITY.—A patient may be retained by a ~~receiving~~ facility or involuntarily placed in a treatment facility upon the recommendation of the administrator of the ~~receiving~~ facility where the patient has been examined and after adherence to the notice and hearing procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a psychiatric nurse, ~~clinical~~ psychologist, or another psychiatrist, both of whom have personally examined the patient

within the preceding 72 hours, that the criteria for involuntary inpatient placement are met. However, in a county that has a population of fewer than 50,000, if the administrator certifies that a psychiatrist, psychiatric nurse, or ~~clinical~~ psychologist is not available to provide the second opinion, the second opinion may be provided by a ~~licensed~~ physician who has postgraduate training and experience in diagnosis and treatment of mental illness ~~and nervous disorders~~ or by a psychiatric nurse. Any second opinion authorized in this subsection may be conducted through a face-to-face examination, in person or by electronic means, including telemedicine. Such recommendation shall be entered on a petition for ~~an~~ involuntary inpatient placement certificate that authorizes the ~~receiving~~ facility to retain the patient pending transfer to a treatment facility or completion of a hearing.

(3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—

(a) The administrator of the facility shall file a petition for involuntary inpatient placement in the court in the county where the patient is located. Upon filing, the clerk of the court shall provide copies to the department, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located. A ~~No~~ fee may not ~~shall~~ be charged for the filing of a petition under this subsection.

(b) A facility filing a petition under this subsection for involuntary inpatient placement shall send a copy of the petition to the department and the managing entity in its area.

(4) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary inpatient

placement, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(5) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing~~. The continuance shall be~~ for ~~a period of~~ up to 4 weeks.

(6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

(a)1. The court shall hold the hearing on involuntary inpatient placement within 5 court working days, unless a continuance is granted.

2. Except for good cause documented in the court file, the hearing must ~~shall~~ be held in the county or the facility, as appropriate, where the patient is located, must ~~and shall~~ be as convenient to the patient as is ~~may be~~ consistent with orderly procedure, and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient, and the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioning

facility administrator, as the real party in interest in the proceeding.

3.~~2.~~ The court may appoint a general or special magistrate to preside at the hearing. One of the two professionals who executed the petition for involuntary inpatient placement certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided for by law ~~provide for one~~. The independent expert's report is ~~shall be~~ confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(b) If the court concludes that the patient meets the criteria for involuntary inpatient placement, it may ~~shall~~ order that the patient be transferred to a treatment facility or, if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate ~~receiving or treatment~~ facility, or that the patient receive services from such a ~~receiving or treatment~~ facility or service provider, on an involuntary basis, for a period of up to 90 days ~~6 months~~. However, any order for involuntary mental health services in a state treatment facility may be for up to 6 months. The order shall specify the nature and extent of the patient's mental illness. The facility shall discharge a patient any time the patient no longer meets the criteria for involuntary inpatient placement, unless the patient has transferred to voluntary

status.

(c) If at any time before ~~prior to~~ the conclusion of the hearing on involuntary inpatient placement it appears to the court that the person does not meet the criteria for involuntary inpatient placement under this section, but instead meets the criteria for involuntary outpatient services ~~placement~~, the court may order the person evaluated for involuntary outpatient services ~~placement~~ pursuant to s. 394.4655. The petition and hearing procedures set forth in s. 394.4655 shall apply. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, then the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings are ~~shall be~~ governed by chapter 397.

(d) At the hearing on involuntary inpatient placement, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598.

(e) The administrator of the petitioning ~~receiving~~ facility shall provide a copy of the court order and adequate documentation of a patient's mental illness to the administrator of a treatment facility if the ~~whenever a~~ patient is ordered for involuntary inpatient placement, whether by civil or criminal court. The documentation must ~~shall~~ include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a ~~clinical~~ psychologist, a marriage and family therapist, a mental

health counselor, or a clinical social worker. The administrator of a treatment facility may refuse admission to any patient directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied ~~at the same time~~ by adequate orders and documentation.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT PLACEMENT.—

(a) Hearings on petitions for continued involuntary inpatient placement of an individual placed at any state treatment facility are ~~shall be~~ administrative hearings and must ~~shall~~ be conducted in accordance with ~~the provisions of~~ s. 120.57(1), except that any order entered by the administrative law judge is ~~shall be~~ final and subject to judicial review in accordance with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity are ~~shall be~~ governed by ~~the provisions of~~ s. 916.15.

(b) If the patient continues to meet the criteria for involuntary inpatient placement and is being treated at a state treatment facility, the administrator shall, before ~~prior to~~ the expiration of the period ~~during which~~ the state treatment facility is authorized to retain the patient, file a petition requesting authorization for continued involuntary inpatient placement. The request must ~~shall~~ be accompanied by a statement from the patient's physician, psychiatrist, psychiatric nurse, or ~~clinical~~ psychologist justifying the request, a brief description of the patient's treatment during the time he or she was involuntarily placed, and an individualized plan of continued treatment. Notice of the hearing must ~~shall~~ be provided as provided ~~set forth~~ in s. 394.4599. If a patient's

attendance at the hearing is voluntarily waived, the administrative law judge must determine that the waiver is knowing and voluntary before waiving the presence of the patient from all or a portion of the hearing. Alternatively, if at the hearing the administrative law judge finds that attendance at the hearing is not consistent with the best interests of the patient, the administrative law judge may waive the presence of the patient from all or any portion of the hearing, unless the patient, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath, and the proceedings must be recorded.

(c) Unless the patient is otherwise represented or is ineligible, he or she shall be represented at the hearing on the petition for continued involuntary inpatient placement by the public defender of the circuit in which the facility is located.

(d) If at a hearing it is shown that the patient continues to meet the criteria for involuntary inpatient placement, the administrative law judge shall sign the order for continued involuntary inpatient placement for a period of up to 90 days ~~not to exceed 6 months~~. However, any order for involuntary mental health services in a state treatment facility may be for up to 6 months ~~The same procedure shall be repeated prior to the expiration of each additional period the patient is retained~~.

(e) If continued involuntary inpatient placement is necessary for a patient admitted while serving a criminal sentence, but his or her ~~whose~~ sentence is about to expire, or for a minor ~~patient~~ involuntarily placed, ~~while a minor~~ but who is about to reach the age of 18, the administrator shall petition the administrative law judge for an order authorizing

continued involuntary inpatient placement.

(f) If the patient has been previously found incompetent to consent to treatment, the administrative law judge shall consider testimony and evidence regarding the patient's competence. If the administrative law judge finds evidence that the patient is now competent to consent to treatment, the administrative law judge may issue a recommended order to the court that found the patient incompetent to consent to treatment that the patient's competence be restored and that any guardian advocate previously appointed be discharged.

(g) If the patient has been ordered to undergo involuntary inpatient placement and has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's incompetence. If the patient's competency to consent to treatment is restored, the discharge of the guardian advocate shall be governed by the provisions of s. 394.4598.

The procedure required in this subsection must be followed before the expiration of each additional period the patient is involuntarily receiving services.

(8) RETURN TO FACILITY ~~OF PATIENTS~~.—If a patient involuntarily held ~~When a patient~~ at a ~~treatment~~ facility under this part leaves the facility without the administrator's authorization, the administrator may authorize a search for the patient and his or her ~~the~~ return ~~of the patient~~ to the facility. The administrator may request the assistance of a law enforcement agency in this regard ~~the search for and return of the patient~~.

Section 13. Section 394.46715, Florida Statutes, is amended to read:

394.46715 Rulemaking authority.—The department may adopt rules to administer this part ~~Department of Children and Families shall have rulemaking authority to implement the provisions of ss. 394.455, 394.4598, 394.4615, 394.463, 394.4655, and 394.467 as amended or created by this act. These rules shall be for the purpose of protecting the health, safety, and well-being of persons examined, treated, or placed under this act~~.

Section 14. Section 394.761, Florida Statutes, is created to read:

394.761 Revenue maximization.—The agency and the department shall develop a plan to obtain federal approval for increasing the availability of federal Medicaid funding for behavioral health care. Increased funding shall be used to advance the goal of improved integration of behavioral health and primary care services through development and effective implementation of coordinated care as described in s. 394.9082. The agency and the department shall submit the written plan to the President of the Senate and the Speaker of the House of Representatives by November 1, 2016. The plan shall identify the amount of general revenue funding appropriated for mental health and substance abuse services which is eligible to be used as state Medicaid match. The plan must evaluate alternative uses of increased Medicaid funding, including expansion of Medicaid eligibility for the severely and persistently mentally ill; increased reimbursement rates for behavioral health services; adjustments to the capitation rate for Medicaid enrollees with chronic

mental illness and substance abuse disorders; supplemental payments to mental health and substance abuse providers through a designated state health program or other mechanism; and innovative programs for incentivizing improved outcomes for behavioral health conditions. The plan must identify the advantages and disadvantages of each alternative and assess the potential of each for achieving improved integration of services. The plan must identify the federal approvals necessary to implement each alternative and project a timeline for implementation.

Section 15. Subsection (11) is added to section 394.875, Florida Statutes, to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required.—

(11) By January 1, 2017, the department shall modify licensure rules and procedures to create an option for a single, consolidated license for a provider who offers multiple types of mental health and substance abuse services regulated under this chapter and chapter 397. Providers eligible for a consolidated license shall operate these services through a single corporate entity and a unified management structure. Any provider serving adults and children must meet department standards for separate facilities and other requirements necessary to ensure children's safety and promote therapeutic efficacy.

Section 16. Section 394.9082, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 394.9082, F.S., for present text.)

394.9082 Behavioral health managing entities' purpose; definitions; duties; contracting; accountability.—

(1) PURPOSE.—The purpose of the behavioral health managing entities is to plan for and coordinate the delivery of community mental health and substance abuse services, to improve access to care, to promote service continuity, and to support efficient and effective delivery of services.

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

(a) "Behavioral health services" means mental health services and substance abuse prevention and treatment services as described in this chapter and chapter 397.

(b) "Case management" means those direct services provided to a client in order to assess needs, plan or arrange services, coordinate service providers, monitor service delivery, and evaluate outcomes.

(c) "Coordinated system of care" means the full array of behavioral health and related services in a region or a community offered by all service providers, whether participating under contract with the managing entity or through another method of community partnership or mutual agreement.

(d) "Geographic area" means one or more contiguous counties, circuits, or regions as described in s. 409.966 or s. 381.0406.

(e) "High-need or high-utilization individual" means a recipient who meets one or more of the following criteria and may be eligible for intensive case management services:

1. Has resided in a state mental health facility for at least 6 months in the last 36 months;

2. Has had two or more admissions to a state mental health

facility in the last 36 months; or

3. Has had three or more admissions to a crisis stabilization unit, an addictions receiving facility, a short-term residential facility, or an inpatient psychiatric unit within the last 12 months.

(f) "Managing entity" means a corporation designated or filed as a nonprofit organization under s. 501(c)(3) of the Internal Revenue Code which is selected by, and is under contract with, the department to manage the daily operational delivery of behavioral health services through a coordinated system of care.

(g) "Provider network" means the group of direct service providers, facilities, and organizations under contract with a managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services.

(h) "Receiving facility" means any public or private facility designated by the department to receive and hold or to refer, 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. County jails may not be used or designated as a receiving facility, a triage center, or an access center.

(3) DEPARTMENT DUTIES.—The department shall:

(a) Designate, with input from the managing entity, facilities that meet the definitions in s. 394.455(1), (2), (12), and (41) and the receiving system developed by one or more counties pursuant to s. 394.4573(2)(b).

(b) Contract with organizations to serve as the managing

entity in accordance with the requirements of this section.

(c) Specify the geographic area served.

(d) Specify data reporting and use of shared data systems.

(e) Develop strategies to divert persons with mental illness or substance abuse disorders from the criminal and juvenile justice systems.

(f) Support the development and implementation of a coordinated system of care by requiring each provider that receives state funds for behavioral health services through a direct contract with the department to work with the managing entity in the provider's service area to coordinate the provision of behavioral health services, as part of the contract with the department.

(g) Set performance measures and performance standards for managing entities based on nationally recognized standards, such as those developed by the National Quality Forum, the National Committee for Quality Assurance, or similar credible sources. Performance standards must include all of the following:

1. Annual improvement in the extent to which the need for behavioral health services is met by the coordinated system of care in the geographic area served.

2. Annual improvement in the percentage of patients who receive services through the coordinated system of care and who achieve improved functional status as indicated by health condition, employment status, and housing stability.

3. Annual reduction in the rates of readmissions to acute care facilities, jails, prisons, and forensic facilities.

4. Annual improvement in consumer and family satisfaction.

(h) Provide technical assistance to the managing entities.

(i) Promote the integration of behavioral health care and primary care.

(j) Facilitate the coordination between the managing entity and other payors of behavioral health care.

(k) Develop and provide a unique identifier for clients receiving services under the managing entity to coordinate care.

(l) Coordinate procedures for the referral and admission of patients to, and the discharge of patients from, state treatment facilities and their return to the community.

(m) Ensure that managing entities comply with state and federal laws, rules, and regulations.

(n) Develop rules for the operations of, and the requirements that must be met by, the managing entity, if necessary.

(4) CONTRACT WITH MANAGING ENTITIES.—

(a) The department's contracts with managing entities must support efficient and effective administration of the behavioral health system and ensure accountability for performance.

(b) Beginning July 1, 2018, managing entities under contract with the department are subject to a contract performance review. The review must include:

1. Analysis of the duties and performance measures described in this section;

2. The results of contract monitoring compiled during the term of the contract; and

3. Related compliance and performance issues.

(c) For the managing entities whose performance is determined satisfactory after completion of the review pursuant to paragraph (b), and before the end of the term of the

contract, the department may negotiate and enter into a contract with the managing entity for a period of 4 years pursuant to s. 287.057(3)(e).

(d) The performance review must be completed by the beginning of the third year of the 4-year contract. In the event the managing entity does not meet the requirements of the performance review, a corrective action plan must be created by the department. The managing entity must complete the corrective action plan before the beginning of the fourth year of the contract. If the corrective action plan is not satisfactorily completed, the department shall provide notice to the managing entity that the contract will be terminated at the end of the contract term and the department shall initiate a competitive procurement process to select a new managing entity pursuant to s. 287.057.

(5) MANAGING ENTITIES DUTIES.—A managing entity shall:

(a) Maintain a board of directors that is representative of the community and that, at a minimum, includes consumers and family members, community stakeholders and organizations, and providers of mental health and substance abuse services, including public and private receiving facilities.

(b) Conduct a community behavioral health care needs assessment in the geographic area served by the managing entity. The needs assessment must be updated annually and provided to the department. The assessment must include, at a minimum, the information the department needs for its annual report to the Governor and Legislature pursuant to s. 394.4573.

(c) Develop local resources by pursuing third-party payments for services, applying for grants, securing local

matching funds and in-kind services, and any other methods needed to ensure services are available and accessible.

(d) Provide assistance to counties to develop a designated receiving system pursuant to s. 394.4573(2)(b) and a transportation plan pursuant to s. 394.462.

(e) Promote the development and effective implementation of a coordinated system of care pursuant to s. 394.4573.

(f) Develop a comprehensive network of qualified providers to deliver behavioral health services. The managing entity is not required to competitively procure network providers, but must have a process in place to publicize opportunities to join the network and to evaluate providers in the network to determine if they can remain in the network. These processes must be published on the website of the managing entity. The managing entity must ensure continuity of care for clients if a provider ceases to provide a service or leaves the network.

(g) Enter into cooperative agreements with local homeless councils and organizations to allow the sharing of available resource information, shared client information, client referral services, and any other data or information that may be useful in addressing the homelessness of persons suffering from a behavioral health crisis.

(h) Monitor network providers' performance and their compliance with contract requirements and federal and state laws, rules, and regulations.

(i) Provide or contract for case management services.

(j) Manage and allocate funds for services to meet the requirements of law or rule.

(k) Promote integration of behavioral health with primary

care.

(l) Implement shared data systems necessary for the delivery of coordinated care and integrated services, the assessment of managing entity performance and provider performance, and the reporting of outcomes and costs of services.

(m) Operate in a transparent manner, providing public access to information, notice of meetings, and opportunities for public participation in managing entity decisionmaking.

(n) Establish and maintain effective relationships with community stakeholders, including local governments and other organizations that serve individuals with behavioral health needs.

(o) Collaborate with local criminal and juvenile justice systems to divert persons with mental illness or substance abuse disorders, or both, from the criminal and juvenile justice systems.

(p) Collaborate with the local court system to develop procedures to maximize the use of involuntary outpatient services; reduce involuntary inpatient treatment; and increase diversion from the criminal and juvenile justice systems.

(6) FUNDING FOR MANAGING ENTITIES.—

(a) A contract established between the department and a managing entity under this section must be funded by general revenue, other applicable state funds, or applicable federal funding sources. A managing entity may carry forward documented unexpended state funds from one fiscal year to the next, but the cumulative amount carried forward may not exceed 8 percent of the total value of the contract. Any unexpended state funds in

excess of that percentage must be returned to the department. The funds carried forward may not be used in a way that would increase future recurring obligations or for any program or service that was not authorized as of July 1, 2016, under the existing contract with the department. Expenditures of funds carried forward must be separately reported to the department. Any unexpended funds that remain at the end of the contract period must be returned to the department. Funds carried forward may be retained through contract renewals and new contract procurements as long as the same managing entity is retained by the department.

(b) The method of payment for a fixed-price contract with a managing entity must provide for a 2-month advance payment at the beginning of each fiscal year and equal monthly payments thereafter.

(7) CRISIS STABILIZATION SERVICES UTILIZATION DATABASE.—The department shall develop, implement, and maintain standards under which a managing entity shall collect utilization data from all public receiving facilities situated within its geographic service area. As used in this subsection, the term "public receiving facility" means an entity that meets the licensure requirements of, and is designated by, the department to operate as a public receiving facility under s. 394.875 and that is operating as a licensed crisis stabilization unit.

(a) The department shall develop standards and protocols for managing entities and public receiving facilities to be used for data collection, storage, transmittal, and analysis. The standards and protocols must allow for compatibility of data and data transmittal between public receiving facilities, managing

entities, and the department for the implementation and requirements of this subsection.

(b) A managing entity shall require a public receiving facility within its provider network to submit data, in real time or at least daily, to the managing entity for:

1. All admissions and discharges of clients receiving public receiving facility services who qualify as indigent, as defined in s. 394.4787; and

2. The current active census of total licensed beds, the number of beds purchased by the department, the number of clients qualifying as indigent who occupy those beds, and the total number of unoccupied licensed beds regardless of funding.

(c) A managing entity shall require a public receiving facility within its provider network to submit data, on a monthly basis, to the managing entity which aggregates the daily data submitted under paragraph (b). The managing entity shall reconcile the data in the monthly submission to the data received by the managing entity under paragraph (b) to check for consistency. If the monthly aggregate data submitted by a public receiving facility under this paragraph are inconsistent with the daily data submitted under paragraph (b), the managing entity shall consult with the public receiving facility to make corrections necessary to ensure accurate data.

(d) A managing entity shall require a public receiving facility within its provider network to submit data, on an annual basis, to the managing entity which aggregates the data submitted and reconciled under paragraph (c). The managing entity shall reconcile the data in the annual submission to the data received and reconciled by the managing entity under

paragraph (c) to check for consistency. If the annual aggregate data submitted by a public receiving facility under this paragraph are inconsistent with the data received and reconciled under paragraph (c), the managing entity shall consult with the public receiving facility to make corrections necessary to ensure accurate data.

(e) After ensuring the accuracy of data pursuant to paragraphs (c) and (d), the managing entity shall submit the data to the department on a monthly and an annual basis. The department shall create a statewide database for the data described under paragraph (b) and submitted under this paragraph for the purpose of analyzing the payments for and the use of crisis stabilization services funded by the Baker Act on a statewide basis and on an individual public receiving facility basis.

Section 17. Present subsections (20) through (45) of section 397.311, Florida Statutes, are redesignated as subsections (21) through (46), respectively, a new subsection (20) is added to that section, and present subsections (30) and (38) of that section are amended, to read:

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

(20) "Involuntary services" means court-ordered outpatient services or treatment for substance abuse disorders or services provided in an inpatient placement in a receiving facility or treatment facility.

(31) ~~(30)~~ "Qualified professional" means a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an

advanced registered nurse practitioner ~~having a specialty in psychiatry~~ licensed under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

(39) ~~(38)~~ "Service component" or "component" means a discrete operational entity within a service provider which is subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment described in subsection (23) ~~(22)~~.

Section 18. Section 397.675, Florida Statutes, is amended to read:

397.675 Criteria for involuntary admissions, including protective custody, emergency admission, and other involuntary assessment, involuntary treatment, and alternative involuntary assessment for minors, for purposes of assessment and stabilization, and for involuntary treatment.—A person meets the criteria for involuntary admission if there is good faith reason to believe that the person has a substance abuse or co-occurring mental health disorder ~~is substance abuse impaired~~ and, because of such disorder ~~impairment~~:

(1) Has lost the power of self-control with respect to

substance abuse ~~use~~; and ~~either~~

(2)(a) Without care or treatment, is likely to suffer from neglect or to refuse to care for himself or herself, that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, ~~or~~ herself, or another; or

(b) Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she ~~the person~~ is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although ~~thereto; however,~~ mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services.

Section 19. Section 397.679, Florida Statutes, is amended to read:

397.679 Emergency admission; circumstances justifying.—A person who meets the criteria for involuntary admission in s. 397.675 may be admitted to a hospital or to a licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only, upon receipt by the facility of a ~~the physician's~~ certificate by a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a

licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master's-level-certified addictions professional, if the certificate is specific to substance abuse disorders, and the completion of an application for emergency admission.

Section 20. Section 397.6791, Florida Statutes, is amended to read:

397.6791 Emergency admission; persons who may initiate.—The following professionals ~~persons~~ may request a certificate for ~~an~~ emergency assessment or admission:

(1) In the case of an adult, physicians, advanced registered nurse practitioners, clinical psychologists, licensed clinical social workers, licensed marriage and family therapists, licensed mental health counselors, physician assistants working under the scope of practice of the supervising physician, and a master's-level-certified addictions professional, if the certificate is specific to substance abuse disorders ~~the certifying physician~~, the person's spouse or legal guardian, any relative of the person, or any other responsible adult who has personal knowledge of the person's substance abuse impairment.

(2) In the case of a minor, the minor's parent, legal guardian, or legal custodian.

Section 21. Section 397.6793, Florida Statutes, is amended to read:

397.6793 Professional's ~~Physician's~~ certificate for emergency admission.—

(1) The professional's ~~physician's~~ certificate must include

the name of the person to be admitted, the relationship between the person and the professional executing the certificate ~~physician~~, the relationship between the applicant and the professional ~~physician~~, any relationship between the professional ~~physician~~ and the licensed service provider, ~~and~~ a statement that the person has been examined and assessed within the preceding 5 days of the application date, and ~~must include~~ factual allegations with respect to the need for emergency admission, including:

(a) The reason for the ~~physician's~~ belief that the person is substance abuse impaired; and

(b) The reason for the ~~physician's~~ belief that because of such impairment the person has lost the power of self-control with respect to substance abuse; and ~~either~~

(c)1. The reason for the belief ~~physician believes~~ that, without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services or there is substantial likelihood that the person has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

2. The reason for the belief ~~physician believes~~ that the person's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the person is incapable of appreciating his or her need for care and of making a rational decision regarding his or her need for

care.

(2) The professional's ~~physician's~~ certificate must recommend the least restrictive type of service that is appropriate for the person. The certificate must be signed by the professional ~~physician~~. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the appropriate facility for involuntary examination.

(3) A signed copy of the professional's ~~physician's~~ certificate shall accompany the person~~,~~ and shall be made a part of the person's clinical record, together with a signed copy of the application. The application and the professional's ~~physician's~~ certificate authorize the involuntary admission of the person pursuant to, and subject to the provisions of, ss. 397.679-397.6797.

(4) The professional's certificate is valid for 7 days after issuance.

(5) The professional's ~~physician's~~ certificate must indicate whether the person requires transportation assistance for delivery for emergency admission and specify, pursuant to s. 397.6795, the type of transportation assistance necessary.

Section 22. Section 397.6795, Florida Statutes, is amended to read:

397.6795 Transportation-assisted delivery of persons for emergency assessment.—An applicant for a person's emergency admission, ~~or~~ the person's spouse or guardian, or a law enforcement officer~~, or a health officer~~ may deliver a person named in the professional's ~~physician's~~ certificate for

emergency admission to a hospital or a licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization.

Section 23. Subsection (1) of section 397.681, Florida Statutes, is amended to read:

397.681 Involuntary petitions; general provisions; court jurisdiction and right to counsel.—

(1) JURISDICTION.—The courts have jurisdiction of involuntary assessment and stabilization petitions and involuntary treatment petitions for substance abuse impaired persons, and such petitions must be filed with the clerk of the court in the county where the person is located. The court may not charge a fee for the filing of a petition under this section. The chief judge may appoint a general or special magistrate to preside over all or part of the proceedings. The alleged impaired person is named as the respondent.

Section 24. Subsection (1) of section 397.6811, Florida Statutes, is amended to read:

397.6811 Involuntary assessment and stabilization.—A person determined by the court to appear to meet the criteria for involuntary admission under s. 397.675 may be admitted for a period of 5 days to a hospital or to a licensed detoxification facility or addictions receiving facility, for involuntary assessment and stabilization or to a less restrictive component of a licensed service provider for assessment only upon entry of a court order or upon receipt by the licensed service provider of a petition. Involuntary assessment and stabilization may be initiated by the submission of a petition to the court.

(1) If the person upon whose behalf the petition is being

filed is an adult, a petition for involuntary assessment and stabilization may be filed by the respondent's spouse ~~or~~ , legal guardian, any relative, a private practitioner, the director of a licensed service provider or the director's designee, or any individual ~~three adults~~ who has direct ~~have~~ personal knowledge of the respondent's substance abuse impairment.

Section 25. Section 397.6814, Florida Statutes, is amended to read:

397.6814 Involuntary assessment and stabilization; contents of petition.—A petition for involuntary assessment and stabilization must contain the name of the respondent,~~;~~ the name of the applicant or applicants,~~;~~ the relationship between the respondent and the applicant, and~~;~~ the name of the respondent's attorney, if known, ~~and a statement of the respondent's ability to afford an attorney;~~ and must state facts to support the need for involuntary assessment and stabilization, including:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired; ~~and~~

(2) The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and ~~either~~

(3)(a) The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

If the respondent has refused to submit to an assessment, such refusal must be alleged in the petition.

A fee may not be charged for the filing of a petition pursuant to this section.

Section 26. Section 397.6819, Florida Statutes, is amended to read:

397.6819 Involuntary assessment and stabilization; responsibility of licensed service provider.—A licensed service provider may admit an individual for involuntary assessment and stabilization for a period not to exceed 5 days unless a petition for involuntary outpatient services has been initiated which authorizes the licensed service provider to retain physical custody of the person pending further order of the court pursuant to s. 397.6822. The individual must be assessed within 24 hours ~~without unnecessary delay~~ by a qualified professional. The person may not be held pursuant to this section beyond the 24-hour assessment period unless the assessment has been reviewed and authorized by a licensed physician as necessary for continued stabilization. If an assessment is performed by a qualified professional who is not a physician, the assessment must be reviewed by a physician before the end of the assessment period.

Section 27. Section 397.695, Florida Statutes, is amended to read:

397.695 Involuntary outpatient services ~~treatment~~; persons who may petition.—

(1)(a) If the respondent is an adult, a petition for involuntary outpatient services ~~treatment~~ may be filed by the

respondent's spouse or legal guardian, any relative, a service provider, or any individual ~~three adults~~ who has direct ~~have~~ personal knowledge of the respondent's substance abuse impairment and his or her prior course of assessment and treatment.

(b) The administrator of a receiving facility, a crisis stabilization unit, or an addictions receiving facility where the patient has been examined may retain the patient at the facility after adherence to the notice procedures provided in s. 397.6955. The recommendation for involuntary outpatient services must be supported by the opinion of a qualified professional as defined in s. 397.311(31) or a master's-level-certified addictions professional and by the second opinion of a psychologist, a physician, or an advanced registered nurse practitioner licensed under chapter 464, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, in a county having a population of fewer than 50,000, if the administrator of the facility certifies that a qualified professional is not available to provide the second opinion, the second opinion may be provided by a physician who has postgraduate training and experience in the diagnosis and treatment of substance abuse disorders. Any second opinion authorized in this section may be conducted through face-to-face examination, in person, or by electronic means, including telemedicine. Such recommendation must be entered on an involuntary outpatient certificate that authorizes the facility to retain the patient pending completion of a hearing. The certificate must be made a part of the patient's clinical

record.

(c) If the patient has been stabilized and no longer meets the criteria for involuntary assessment and stabilization pursuant to s. 397.6811, the patient must be released from the facility while awaiting the hearing for involuntary outpatient services. Before filing a petition for involuntary outpatient services, the administrator of the facility must identify the service provider that will have responsibility for service provision under the order for involuntary outpatient services, unless the person is otherwise participating in outpatient substance abuse disorder services and is not in need of public financing of the services, in which case the person, if eligible, may be ordered to involuntary outpatient services pursuant to the existing provision-of-services relationship he or she has for substance abuse disorder services.

(d) The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if applicable, for the order for outpatient services and provide a copy of the proposed treatment plan to the patient and the administrator of the facility. The treatment plan must specify the nature and extent of the patient's substance abuse disorder, address the reduction of symptoms that necessitate involuntary outpatient services, and include measurable goals and objectives for the services and treatment that are provided to treat the person's substance abuse disorder and to assist the person in living and functioning in the community or prevent relapse or further deterioration. Service providers may coordinate, select, and supervise other individuals to implement specific aspects of the treatment plan.

The services in the treatment plan must be deemed clinically appropriate by a qualified professional who consults with, or is employed by, the service provider. The service provider must certify that the recommended services in the treatment plan are available for the stabilization and improvement of the patient. If the service provider certifies that the recommended services in the proposed treatment plan are not available, the petition may not be filed. The service provider must document its inquiry with the department and the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(e) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient services, the administrator of the treatment facility may, before the expiration of the period during which the treatment facility is authorized to retain the patient, recommend involuntary outpatient services. The recommendation must be supported by the opinion of a qualified professional as defined in s. 397.311(31) or a master's-level-certified addictions professional and by the second opinion of a psychologist, a physician, an advanced registered nurse practitioner licensed under chapter 464, or a mental health professional licensed under chapter 491, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, in a county having a population of fewer than 50,000, if the administrator of the facility certifies that a qualified professional is not available to provide the second opinion, the second opinion may be provided by a physician who has postgraduate training and experience in the diagnosis and

treatment of substance abuse disorders. Any second opinion authorized in this section may be conducted through face-to-face examination, in person, or by electronic means, including telemedicine. Such recommendation must be entered on an involuntary outpatient certificate that authorizes the facility to retain the patient pending completion of a hearing. The certificate must be made a part of the patient's clinical record.

(f) The service provider who is responsible for providing services under the order for involuntary outpatient services must be identified before the entry of the order for outpatient services. The service provider shall certify to the court that the recommended services in the treatment plan are available for the stabilization and improvement of the patient. If the service provider certifies that the recommended services in the proposed treatment plan are not available, the petition may not be filed. The service provider must document its inquiry with the department and the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(2) If the respondent is a minor, a petition for involuntary treatment may be filed by a parent, legal guardian, or service provider.

Section 28. Section 397.6951, Florida Statutes, is amended to read:

397.6951 Contents of petition for involuntary outpatient services ~~treatment~~.~~—~~A petition for involuntary outpatient services ~~treatment~~ must contain the name of the respondent ~~to be admitted~~; the name of the petitioner or petitioners; the

relationship between the respondent and the petitioner; the name of the respondent's attorney, if known~~, and a statement of the petitioner's knowledge of the respondent's ability to afford an attorney~~; the findings and recommendations of the assessment performed by the qualified professional; and the factual allegations presented by the petitioner establishing the need for involuntary outpatient services. The factual allegations must demonstrate ~~treatment, including~~:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired; ~~and~~

(2) The respondent's history of failure to comply with requirements for treatment for substance abuse and that the respondent has been involuntarily admitted to a receiving or treatment facility at least twice within the immediately preceding 36 months; ~~The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and either~~

(3) That the respondent is, as a result of his or her substance abuse disorder, unlikely to voluntarily participate in the recommended services after sufficient and conscientious explanation and disclosure of the purpose of the services or he or she is unable to determine for himself or herself whether outpatient services are necessary;

(4) That, in view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services; that without services, the person is likely to suffer from neglect or to refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that

there is a substantial likelihood that without services the person will cause serious bodily harm to himself, herself, or others in the near future, as evidenced by recent behavior; and

(5) That it is likely that the person will benefit from involuntary outpatient services.

~~(3)(a) The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or~~

~~(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.~~

Section 29. Section 397.6955, Florida Statutes, is amended to read:

397.6955 Duties of court upon filing of petition for involuntary outpatient services ~~treatment~~.—

(1) Upon the filing of a petition for ~~the~~ involuntary outpatient services for ~~treatment of~~ a substance abuse impaired person with the clerk of the court, the court shall immediately determine whether the respondent is represented by an attorney or whether the appointment of counsel for the respondent is appropriate. If the court appoints counsel for the person, the clerk of the court shall immediately notify the regional conflict counsel, created pursuant to s. 27.511, of the appointment. The regional conflict counsel shall represent the person until the petition is dismissed, the court order expires, or the person is discharged from involuntary outpatient services. An attorney that represents the person named in the

petition shall have access to the person, witnesses, and records relevant to the presentation of the person's case and shall represent the interests of the person, regardless of the source of payment to the attorney.

(2) The court shall schedule a hearing to be held on the petition within 5 ~~10~~ days unless a continuance is granted. The court may appoint a general or special master to preside at the hearing.

(3) A copy of the petition and notice of the hearing must be provided to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct. If the respondent is a minor, a copy of the petition and notice of the hearing must be ~~and have such petition and order~~ personally delivered to the respondent ~~if he or she is a minor~~. The court shall also issue a summons to the person whose admission is sought.

Section 30. Section 397.6957, Florida Statutes, is amended to read:

397.6957 Hearing on petition for involuntary outpatient services ~~treatment~~.—

(1) At a hearing on a petition for involuntary outpatient services ~~treatment~~, the court shall hear and review all relevant evidence, including the review of results of the assessment completed by the qualified professional in connection with the respondent's protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. The respondent must be present unless the court finds that his

or her presence is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act in behalf of the respondent throughout the proceedings.

(2) The petitioner has the burden of proving by clear and convincing evidence that:

(a) The respondent is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse~~;, and~~

(b) Because of such impairment the respondent is unlikely to voluntarily participate in the recommended treatment or is unable to determine for himself or herself whether outpatient services are necessary ~~the respondent has lost the power of self-control with respect to substance abuse~~; and ~~either~~

1. Without services, the respondent is likely to suffer from neglect or to refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that there is a substantial likelihood that without services the respondent will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior ~~The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted~~; or

2. The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

(3) One of the qualified professionals who executed the

involuntary outpatient services certificate must be a witness. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the respondent's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(4)~~(3)~~ At the conclusion of the hearing the court shall ~~either~~ dismiss the petition or order the respondent to receive ~~undergo~~ involuntary outpatient services from his or her ~~substance abuse treatment, with the respondent's~~ chosen licensed service provider if ~~to deliver the involuntary substance abuse treatment where~~ possible and appropriate.

Section 31. Section 397.697, Florida Statutes, is amended to read:

397.697 Court determination; effect of court order for involuntary outpatient services ~~substance abuse treatment~~.—

(1) When the court finds that the conditions for involuntary outpatient services ~~substance abuse treatment~~ have been proved by clear and convincing evidence, it may order the respondent to receive ~~undergo~~ involuntary outpatient services from ~~treatment by~~ a licensed service provider for a period not to exceed 60 days. If the court finds it necessary, it may direct the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order, or to the nearest appropriate licensed service provider, for involuntary outpatient services ~~treatment~~. When the conditions justifying involuntary outpatient services ~~treatment~~ no longer exist, the individual must be released as

provided in s. 397.6971. When the conditions justifying involuntary outpatient services ~~treatment~~ are expected to exist after 60 days of services ~~treatment~~, a renewal of the involuntary outpatient services ~~treatment~~ order may be requested pursuant to s. 397.6975 before ~~prior to~~ the end of the 60-day period.

(2) In all cases resulting in an order for involuntary outpatient services ~~substance abuse treatment~~, the court shall retain jurisdiction over the case and the parties for the entry of such further orders as the circumstances may require. The court's requirements for notification of proposed release must be included in the original ~~treatment~~ order.

(3) An involuntary outpatient services ~~treatment~~ order authorizes the licensed service provider to require the individual to receive services that ~~undergo such treatment as~~ will benefit him or her, including services ~~treatment~~ at any licensable service component of a licensed service provider.

(4) The court may not order involuntary outpatient services if the service provider certifies to the court that the recommended services are not available. The service provider must document its inquiry with the department and the managing entity as to the availability of the requested services. The managing entity must document such efforts to obtain the requested services.

(5) If the court orders involuntary outpatient services, a copy of the order must be sent to the department and the managing entity within 1 working day after it is received from the court. After the order for outpatient services is issued, the service provider and the patient may modify provisions of

the treatment plan. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if appointed, agrees, the service provider shall send notice of the modification to the court. Any material modification of the treatment plan which is contested by the patient or the guardian advocate, if applicable, must be approved or disapproved by the court.

Section 32. Section 397.6971, Florida Statutes, is amended to read:

397.6971 Early release from involuntary outpatient services ~~substance abuse treatment~~.~~—~~

(1) At any time before ~~prior to~~ the end of the 60-day involuntary outpatient services ~~treatment~~ period, or ~~prior to~~ the end of any extension granted pursuant to s. 397.6975, an individual receiving ~~admitted for~~ involuntary outpatient services ~~treatment~~ may be determined eligible for discharge to the most appropriate referral or disposition for the individual when any of the following apply:

(a) The individual no longer meets the criteria for involuntary admission and has given his or her informed consent to be transferred to voluntary treatment status.~~;~~

(b) If the individual was admitted on the grounds of likelihood of infliction of physical harm upon himself or herself or others, such likelihood no longer exists.~~; or~~

(c) If the individual was admitted on the grounds of need for assessment and stabilization or treatment, accompanied by inability to make a determination respecting such need~~, either~~:

1. Such inability no longer exists; or

2. It is evident that further treatment will not bring

about further significant improvements in the individual's condition.~~,~~

(d) The individual is no longer in need of services.~~; or~~

(e) The director of the service provider determines that the individual is beyond the safe management capabilities of the provider.

(2) Whenever a qualified professional determines that an individual admitted for involuntary outpatient services qualifies ~~treatment is ready~~ for early release under ~~for any of the reasons listed in~~ subsection (1), the service provider shall immediately discharge the individual~~,~~ and must notify all persons specified by the court in the original treatment order.

Section 33. Section 397.6975, Florida Statutes, is amended to read:

397.6975 Extension of involuntary outpatient services ~~substance abuse treatment~~ period.—

(1) Whenever a service provider believes that an individual who is nearing the scheduled date of his or her release from involuntary outpatient services ~~treatment~~ continues to meet the criteria for involuntary outpatient services ~~treatment~~ in s. 397.693, a petition for renewal of the involuntary outpatient services ~~treatment~~ order may be filed with the court at least 10 days before the expiration of the court-ordered outpatient services ~~treatment~~ period. The court shall immediately schedule a hearing to be held not more than 15 days after filing of the petition. The court shall provide the copy of the petition for renewal and the notice of the hearing to all parties to the proceeding. The hearing is conducted pursuant to s. 397.6957.

(2) If the court finds that the petition for renewal of the

involuntary outpatient services ~~treatment~~ order should be granted, it may order the respondent to receive ~~undergo~~ involuntary outpatient services ~~treatment~~ for a period not to exceed an additional 90 days. When the conditions justifying involuntary outpatient services ~~treatment~~ no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary outpatient services ~~treatment~~ continue to exist after an additional 90 days of service ~~additional treatment~~, a new petition requesting renewal of the involuntary outpatient services ~~treatment~~ order may be filed pursuant to this section.

(3) Within 1 court working day after the filing of a petition for continued involuntary outpatient services, the court shall appoint the regional conflict counsel to represent the respondent, unless the respondent is otherwise represented by counsel. The clerk of the court shall immediately notify the regional conflict counsel of such appointment. The regional conflict counsel shall represent the respondent until the petition is dismissed or the court order expires or the respondent is discharged from involuntary outpatient services. Any attorney representing the respondent shall have access to the respondent, witnesses, and records relevant to the presentation of the respondent's case and shall represent the interests of the respondent, regardless of the source of payment to the attorney.

(4) Hearings on petitions for continued involuntary outpatient services shall be before the circuit court. The court may appoint a general or special master to preside at the hearing. The procedures for obtaining an order pursuant to this

section shall be in accordance with s. 397.697.

(5) Notice of hearing shall be provided to the respondent or his or her counsel. The respondent and the respondent's counsel may agree to a period of continued outpatient services without a court hearing.

(6) The same procedure shall be repeated before the expiration of each additional period of outpatient services.

(7) If the respondent has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the respondent's competence.

Section 34. Section 397.6977, Florida Statutes, is amended to read:

397.6977 Disposition of individual upon completion of involuntary outpatient services ~~substance abuse treatment~~.—At the conclusion of the 60-day period of court-ordered involuntary outpatient services ~~treatment~~, the respondent ~~individual~~ is automatically discharged unless a motion for renewal of the involuntary outpatient services ~~treatment~~ order has been filed with the court pursuant to s. 397.6975.

Section 35. Section 397.6978, Florida Statutes, is created to read:

397.6978 Guardian advocate; patient incompetent to consent; substance abuse disorder.—

(1) The administrator of a receiving facility or addictions receiving facility may petition the court for the appointment of a guardian advocate based upon the opinion of a qualified professional that the patient is incompetent to consent to treatment. If the court finds that a patient is incompetent to consent to treatment and has not been adjudicated incapacitated

and that a guardian with the authority to consent to mental health treatment has not been appointed, it shall appoint a guardian advocate. The patient has the right to have an attorney represent him or her at the hearing. If the person is indigent, the court shall appoint the office of the regional conflict counsel to represent him or her at the hearing. The patient has the right to testify, cross-examine witnesses, and present witnesses. The proceeding shall be recorded electronically or stenographically, and testimony must be provided under oath. One of the qualified professionals authorized to give an opinion in support of a petition for involuntary placement, as described in s. 397.675 or s. 397.6981, must testify. A guardian advocate must meet the qualifications of a guardian contained in part IV of chapter 744. The person who is appointed as a guardian advocate must agree to the appointment.

(2) The following persons are prohibited from appointment as a patient's guardian advocate:

(a) A professional providing clinical services to the individual under this part.

(b) The qualified professional who initiated the involuntary examination of the individual, if the examination was initiated by a qualified professional's certificate.

(c) An employee, an administrator, or a board member of the facility providing the examination of the individual.

(d) An employee, an administrator, or a board member of the treatment facility providing treatment of the individual.

(e) A person providing any substantial professional services to the individual, including clinical and nonclinical services.

(f) A creditor of the individual.

(g) A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of injunction is temporary or final, and for which the individual was the petitioner.

(h) A person subject to an injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046, whether the order of injunction is temporary or final, and for which the individual was the petitioner.

(3) A facility requesting appointment of a guardian advocate must, before the appointment, provide the prospective guardian advocate with information about the duties and responsibilities of guardian advocates, including information about the ethics of medical decisionmaking. Before asking a guardian advocate to give consent to treatment for a patient, the facility must provide to the guardian advocate sufficient information so that the guardian advocate can decide whether to give express and informed consent to the treatment. Such information must include information that demonstrates that the treatment is essential to the care of the patient and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. If possible, before giving consent to treatment, the guardian advocate must personally meet and talk with the patient and the patient's physician. If that is not possible, the discussion may be conducted by telephone. The decision of the guardian advocate may be reviewed by the court, upon petition of the patient's attorney, the patient's family, or the facility administrator.

(4) In lieu of the training required for guardians

appointed pursuant to chapter 744, a guardian advocate shall attend at least a 4-hour training course approved by the court before exercising his or her authority. At a minimum, the training course must include information about patient rights, the diagnosis of substance abuse disorders, the ethics of medical decisionmaking, and the duties of guardian advocates.

(5) The required training course and the information to be supplied to prospective guardian advocates before their appointment must be developed by the department, approved by the chief judge of the circuit court, and taught by a court-approved organization, which may include, but need not be limited to, a community college, a guardianship organization, a local bar association, or The Florida Bar. The court may waive some or all of the training requirements for guardian advocates or impose additional requirements. The court shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian advocate, the duties assigned to the guardian advocate, and the needs of the patient.

(6) In selecting a guardian advocate, the court shall give preference to the patient's health care surrogate, if one has already been designated by the patient. If the patient has not previously designated a health care surrogate, the selection shall be made, except for good cause documented in the court record, from among the following persons, listed in order of priority:

(a) The patient's spouse.

(b) An adult child of the patient.

(c) A parent of the patient.

(d) The adult next of kin of the patient.

(e) An adult friend of the patient.

(f) An adult trained and willing to serve as the guardian advocate for the patient.

(7) If a guardian with the authority to consent to medical treatment has not already been appointed, or if the patient has not already designated a health care surrogate, the court may authorize the guardian advocate to consent to medical treatment as well as substance abuse disorder treatment. Unless otherwise limited by the court, a guardian advocate with authority to consent to medical treatment has the same authority to make health care decisions and is subject to the same restrictions as a proxy appointed under part IV of chapter 765. Unless the guardian advocate has sought and received express court approval in a proceeding separate from the proceeding to determine the competence of the patient to consent to medical treatment, the guardian advocate may not consent to:

(a) Abortion.

(b) Sterilization.

(c) Electroshock therapy.

(d) Psychosurgery.

(e) Experimental treatments that have not been approved by a federally approved institutional review board in accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56.

The court must base its authorization on evidence that the treatment or procedure is essential to the care of the patient and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. In complying

with this subsection, the court shall follow the procedures set forth in subsection (1).

(8) The guardian advocate shall be discharged when the patient is discharged from an order for involuntary outpatient services or involuntary inpatient placement or when the patient is transferred from involuntary to voluntary status. The court or a hearing officer shall consider the competence of the patient as provided in subsection (1) and may consider an involuntarily placed patient's competence to consent to treatment at any hearing. Upon sufficient evidence, the court may restore, or the hearing officer may recommend that the court restore, the patient's competence. A copy of the order restoring competence or the certificate of discharge containing the restoration of competence shall be provided to the patient and the guardian advocate.

Section 36. Paragraph (a) of subsection (3) 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.—

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455(15) ~~s. 394.455(9)~~ and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been

terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to the department concerning that child.

Section 37. Paragraph (e) of subsection (5) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the

procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County

Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(42) ~~s. 397.311(41)~~. Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals

that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined before ~~prior to~~ program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective

alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

Section 38. Paragraph (c) of subsection (2) of section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(c)1. A receiving facility shall give notice of the whereabouts of a minor who is being involuntarily held for examination pursuant to s. 394.463 to the minor's parent, guardian, caregiver, or guardian advocate, in person or by telephone or other form of electronic communication, immediately after the minor's arrival at the facility. The facility may delay notification for no more than 24 hours after the minor's

arrival if the facility has submitted a report to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect and if the facility deems a delay in notification to be in the minor's best interest.

2. The receiving facility shall attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until the receiving facility receives confirmation from the parent, guardian, caregiver, or guardian advocate, verbally, by telephone or other form of electronic communication, or by recorded message, that notification has been received. Attempts to notify the parent, guardian, caregiver, or guardian advocate must be repeated at least once every hour during the first 12 hours after the minor's arrival and once every 24 hours thereafter and must continue until such confirmation is received, unless the minor is released at the end of the 72-hour examination period, or until a petition for involuntary services ~~placement~~ is filed with the court pursuant to s. 394.463(2)(g) ~~s. 394.463(2)(i)~~. The receiving facility may seek assistance from a law enforcement agency to notify the minor's parent, guardian, caregiver, or guardian advocate if the facility has not received within the first 24 hours after the minor's arrival a confirmation by the parent, guardian, caregiver, or guardian advocate that notification has been received. The receiving facility must document notification attempts in the minor's clinical record.

Section 39. Subsection (3) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care;

programs and services.—

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(7), (33), (36), (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~;

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a professional as defined in s. 394.455(7), (33), (36), (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491.

Section 40. Subsection (5) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(5) A professional as defined in s. 394.455(7), (33), (36), (37), or (38) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 41. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(23)(a)4., 397.311(23)(a)1., and 394.455(41) ~~ss. 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(26)~~, respectively.

Section 42. Subsection (8) of section 397.405, Florida Statutes, is amended to read:

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

(8) A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit religious organization or denomination providing any of the licensed service components itemized under s. 397.311(23) ~~s. 397.311(22)~~ is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious, spiritual, or ecclesiastical in nature.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician or physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced registered nurse practitioner licensed under part I of chapter 464, who provides substance abuse treatment, so long as the physician, physician assistant, psychologist, psychotherapist, or advanced registered nurse practitioner does not represent to the public that he or she is a licensed service provider and does not provide services to individuals pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 43. Subsections (1) and (5) of section 397.407,

Florida Statutes, are amended to read:

397.407 Licensure process; fees.—

(1) The department shall establish the licensure process to include fees and categories of licenses and must prescribe a fee range that is based, at least in part, on the number and complexity of programs listed in s. 397.311(23) ~~s. 397.311(22)~~ which are operated by a licensee. The fees from the licensure of service components are sufficient to cover at least 50 percent of the costs of regulating the service components. The department shall specify a fee range for public and privately funded licensed service providers. Fees for privately funded licensed service providers must exceed the fees for publicly funded licensed service providers.

(5) The department may issue probationary, regular, and interim licenses. The department shall issue one license for each service component that is operated by a service provider and defined pursuant to s. 397.311(23) ~~s. 397.311(22)~~. The license is valid only for the specific service components listed for each specific location identified on the license. The licensed service provider shall apply for a new license at least 60 days before the addition of any service components or 30 days before the relocation of any of its service sites. Provision of service components or delivery of services at a location not identified on the license may be considered an unlicensed operation that authorizes the department to seek an injunction against operation as provided in s. 397.401, in addition to other sanctions authorized by s. 397.415. Probationary and regular licenses may be issued only after all required information has been submitted. A license may not be

transferred. As used in this subsection, the term "transfer" includes, but is not limited to, the transfer of a majority of the ownership interest in the licensed entity or transfer of responsibilities under the license to another entity by contractual arrangement.

Section 44. Section 397.416, Florida Statutes, is amended to read:

397.416 Substance abuse treatment services; qualified professional.—Notwithstanding any other provision of law, a person who was certified through a certification process recognized by the former Department of Health and Rehabilitative Services before January 1, 1995, may perform the duties of a qualified professional with respect to substance abuse treatment services as defined in this chapter, and need not meet the certification requirements contained in s. 397.311(31) ~~s. 397.311(30)~~.

Section 45. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a ~~mental health~~ treatment facility ~~facilities~~ as defined in ~~by~~ s. 394.455(50) ~~s. 394.455(32)~~.

Section 46. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) "Drug rehabilitation program" means a service provider, established pursuant to s. 397.311(40) ~~s. 397.311(39)~~, that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to s. 397.311(40) ~~s. 397.311(39)~~.

Section 47. Subsection (7) of section 744.704, Florida Statutes, is amended to read:

744.704 Powers and duties.—

(7) A public guardian may ~~shall~~ not commit a ward to a ~~mental health~~ treatment facility, as defined in s. 394.455(50) ~~s. 394.455(32)~~, without an involuntary placement proceeding as provided by law.

Section 48. Paragraph (a) of subsection (2) of section

790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review any records available to determine if the potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;

3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred; or

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court or as provided in sub-sub-subparagraph b.(II), and as a result is prohibited by state or federal law from purchasing a firearm.

a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not

competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient services ~~placement~~ as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution; or

(II) Notwithstanding sub-sub-subparagraph (I), voluntary admission to a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under s. 394.463, where each of the following conditions have been met:

(A) An examining physician found that the person is an imminent danger to himself or herself or others.

(B) The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient services ~~treatment~~ would have been filed under s. 394.463(2)(g) ~~s. 394.463(2)(i)4.~~, or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment before ~~prior to~~ a court hearing on the petition.

(C) Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and

written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06 and the person acknowledged such notice in writing, in substantially the following form:

"I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

(D) A judge or a magistrate has, pursuant to sub-sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.

c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who

are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

(I) Except as provided in sub-sub-subparagraph (II), clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of the subject.

(II) For persons committed to a mental institution pursuant to sub-sub-subparagraph b.(II), within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgment must be filed by the administrator of the receiving or treatment facility, as defined in s. 394.455, with the clerk of the court for the county in which the involuntary examination under s. 394.463 occurred. No fee shall be charged for the filing under this sub-sub-subparagraph. The clerk must present the records to a judge or magistrate within 24 hours after receipt of the records. A judge or magistrate is required and has the lawful authority to review the records ex parte and, if the judge or magistrate determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, to order that the record be submitted to the department. If a judge or magistrate orders the submittal of the record to the department, the record must be submitted to the department within 24 hours.

d. A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in

this paragraph, may petition the circuit court that made the adjudication or commitment, or the court that ordered that the record be submitted to the department pursuant to sub-sub-subparagraph c.(II), for relief from the firearm disabilities imposed by such adjudication or commitment. A copy of the petition shall be served on the state attorney for the county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over

the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability granted under this sub-subparagraph has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.

e. Upon receipt of proper notice of relief from firearm disabilities granted under sub-subparagraph d., the department shall delete any mental health record of the person granted relief from the automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

f. The department is authorized to disclose data collected pursuant to this subparagraph to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose this data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license pursuant to s. 790.06(10). When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether the potential buyer or transferee is the same person as the subject of the record. Photographs and any other data that could confirm or negate identity must be made available to the department for

such purposes, notwithstanding any other provision of state law to the contrary. Any such information that is made confidential or exempt from disclosure by law shall retain such confidential or exempt status when transferred to the department.

Section 49. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2 18 16
Meeting Date

12
Bill Number (if applicable)

strike-all
Amendment Barcode (if applicable)

Topic Mental Health Reform

Name Dan Hendrickson

Job Title Chair Advocacy Committee

Address 319 E Park Ave PO Box 1201
Street

Phone 850-570-1967

Tallahassee — *City* | FI — *State* | 32302 — *Zip*

Email danbhendrickson@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Big Bend Mental Health Coalition, NAMI Tallahassee

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

12
Bill Number (if applicable)

654058
Amendment Barcode (if applicable)

Topic Mental Health

Name Corinne Mixon

Job Title Lobbyist

Address 119 E. Park Ave
Street

Phone 766-5725

Tallahassee FL 32301
City State Zip

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Mental Health Counselors Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16
Meeting Date

SB 12
Bill Number (if applicable)

Topic Mental Health and Substance Abuse *Amendment Barcode (if applicable)*

Name Judge Steven Leifman

Job Title Chair, Supreme Court Task Force on Substance Abuse & Mental Health Issues in the Courts; 11th Circuit County Court Judge

Address 1351 NW 12th St. #611 *Street*

Phone

Miami *City* FL *State* 33125 *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Supreme Court Task Force on Substance Abuse & Mental Health Issues in the Courts

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

12
Bill Number (if applicable)

Topic Mental Health + Substance Abuse

Amendment Barcode (if applicable)

Name Ron Watson

Job Title lobbyist

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Tallahassee FL 32309
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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Mental Health Counselors Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

18 Feb 2016
Meeting Date

12
Bill Number (if applicable)

Topic Substance Abuse / Mental Health SVCS

Amendment Barcode (if applicable)

Name Mark Fontaine

Job Title Executive Director

Address 2868 Mahan Dr
Street

Phone 878 2190

Tallahassee FL 32308
City *State* *Zip*

Email mfontaine@fadaa.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Alcohol & Drug Abuse Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 12
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic MENTAL HEALTH & SUBSTANCE ABUSE

Name NATALIE KELLY

Job Title EXECUTIVE DIRECTOR

Address 411 E. COLLEGE AVE
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TALLAHASSEE FL 32301
City *State* *Zip*

Phone (850) 570-5747

Email NATALIE.KELLY@ME.COM

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF MANAGED ENTITIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

18 Feb 16
Meeting Date

12
Bill Number (if applicable)

Topic Mental Health/Substance Abuse

Amendment Barcode (if applicable)

Name Barrey Bishop III

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 577.3032

Tall FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 12
Bill Number (if applicable)

Topic Mental Health

Amendment Barcode (if applicable)

Name Melanie Brown Wooster

Job Title Senior Medicaid Policy Director

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Street

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Tallahassee FL 32301
City *State* *Zip*

Email melanie@fccmh.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Council Community Mental Health

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16
Meeting Date

12
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic MENTAL HEALTH

Name LAURA YOUMANS

Job Title

Address
Street

Phone

City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16
Meeting Date

12
Bill Number (if applicable)

Topic MENTAL HEALTH / S.A.

Amendment Barcode (if applicable)

Name THAD LOWREY

Job Title VP Governmental relations

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City *State* *Zip*

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing OPERATION PAR

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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 Appropriations

BILL:	CS/SB 122
INTRODUCER:	Criminal Justice Committee and Senators Joyner and Bradley
SUBJECT:	Compensation of Victims of Wrongful Incarceration
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.	Brown	Cibula	JU	**Favorable**
3.	Harkness	Sadberry	ACJ	**Recommend: Favorable**
4.	Harkness	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 122 amends chapter 961, Florida Statutes, which establishes an administrative process for compensation for a person who has been wrongfully incarcerated.

Under current law, a person is not eligible for compensation for wrongful incarceration if he or she has a criminal history that includes any felony.[1] This is commonly known as the "clean hands" provision of Florida's wrongful incarceration compensation law. The bill narrows the list of felony offenses that disqualify a person from compensation from all felonies to violent felonies. What constitutes a violent felony is defined in the bill. By narrowing the types of disqualifying felonies, the bill expands the pool of potential applicants for compensation through the administrative process.

This bill has an indeterminate fiscal impact because it is unknown how many applicants would be eligible under the expanded criteria.

The bill has an effective date of October 1, 2016.

[1] Section 961.04, F.S.

II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act has been in effect since July 1, 2008.[2] The law establishes an administrative process for a person to petition the original sentencing court for an order finding the petitioner to have been wrongfully incarcerated and eligible for compensation.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.[3] The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of $50,000 for each year of wrongful incarceration up to a total of $2 million.[4]

"Clean Hands" Provision of the Act – Section 961.04, Florida Statutes

In cases in which sufficient evidence of actual innocence can be shown, the person is still ineligible for compensation if:

- Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense; or
- During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.[5]

Of the 30 states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a "clean hands" provision.[6]

---

[2] Chapter 961, F.S. (ch. 2008-39, L.O.F.).
[3] Section 961.05(2), F.S.
[4] Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any Florida College System Institution as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets and maintains the regular admission requirements; remains registered; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled. The wrongfully incarcerated person is also entitled to reimbursement of the amount of any fine, penalty, or court costs paid, and the amount of any reasonable attorney's fees and expenses incurred for all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon supporting documentation submitted as specified in s. 961.05, F.S.. Finally, the wrongfully incarcerated person is entitled to immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.
[5] Section 961.04, F.S.
[6] *Making Up for Lost Time*, page 19, The Innocence Project, Benjamin N. Cardozo School of Law, www.innocenceproject.org; ("Clean hands" meaning that a person is ineligible for compensation if he or she has prior felony offenses to the one for which compensation is being sought.). Other states generally take these matters up by "personal bills," a process much like Florida's claim bill process.

Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense

A person convicted of a felony may be sentenced to a split sentence, which is a sentence including both incarceration and release under supervision. Alternatively, a person could be granted parole if he or she meets the statutory criteria.[7] Therefore, a person could potentially be wrongfully incarcerated for a crime and then placed on parole or community supervision as part of the sentence. If a person violates a condition of parole or community supervision, he or she may have parole or community supervision revoked. The basis for revocation of parole or community supervision may affect eligibility for compensation for wrongful incarceration.

Under s. 961.06(2), F.S., if a person commits a misdemeanor or a technical violation while under supervision which results in revocation of the community supervision or parole, the person remains eligible for compensation. If, however, a felony law violation results in revocation, the person is no longer eligible for compensation.[8] Ineligibility based on a felony violation applies to any felony.

Wrongful Incarceration Claims

To date, four persons have been compensated under the administrative process for a total of $4,276,901. Six other claimants had their claims denied, based on either ineligibility or incomplete applications.[9]

III. Effect of Proposed Changes:

The bill amends ch. 961, F.S., the Victims of Wrongful Incarceration Compensation Act. Chapter 961, F.S., currently provides an administrative process for a person who has been wrongfully incarcerated for a felony conviction to seek a court order finding the person to be eligible for compensation. Current law disqualifies a person who is otherwise eligible for compensation if he or she has a record of any prior felony, a felony committed while wrongfully incarcerated, or a felony committed while on parole or community supervision.

The bill limits disqualifying felonies to violent felonies. In other words, the bill provides that in order to be found ineligible for compensation based on other crimes, the person must have committed a violent felony, not a simple felony. Specifically:

- Before the person's wrongful incarceration, he or she committed a violent felony;[10]

[7] Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines which was October 1, 1983, and only then if they meet the statutory criteria. Ch. 82-171, Laws of Florida; s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include controlled release, conditional medical or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.) or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).
[8] Section 961.06(2), F.S.
[9] Email correspondence with the Office of the Attorney General (Jan. 14, 2016) (on file with the Senate Committee on Judiciary). Persons whose claims have been successful are Leroy McGee (2010), James Bain (2011), Luis Diaz (2012), and James Richardson (2015). Jarvis McBride's claim was denied (2012). Three persons had their claims rejected based on incomplete applications. These are Robert Lewis (2011), Edwin Lampkin (2012), and Robert Glenn Mosley (2014). Two other claimants were determined to be ineligible for compensation (Ricardo Johnson (2013) and Joseph McGowan (2015)).
[10] Section 961.04(1), F.S.

- During the person's wrongful incarceration, he or she committed a violent felony;[11] or
- During a period of parole or community supervision on the sentence that led to his or her wrongful incarceration, the person committed a violent felony which resulted in the revocation of the parole or community supervision.[12]

A violent felony is defined in the bill by a cross-reference to ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar.

Violent felony offenses which would preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

[11] Section 961.04(2), F.S.
[12] Section 961.06(2), F.S.

In limiting disqualifying felonies to violent felonies, the pool of potential persons eligible for compensation due to wrongful incarceration may increase.

The bill takes effect October 1, 2016.

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:

None.

C. Government Sector Impact:

More persons are potentially eligible for compensation under the provisions of CS/SB 122. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of $50,000 per year of wrongful incarceration up to a limit of $2 million.[13] Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

Although statutory limits on compensation under the Act are clear, the fiscal impact of CS/SB 122 is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total $4,276,901.

[13] The Chief Financial Officer may adjust the annual rate of compensation for inflation for persons found to be wrongfully incarcerated after December 31, 2008. Section 961.06(1)(a), F.S.

The Office of the Attorney General, the Department of Financial Services and the Florida Department of Law Enforcement do not expect a fiscal impact from the provisions of this bill.[14] In addition, the Office of the State Courts Administrator does not expect a significant effect on judicial workload from this bill.[15]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, and 961.06.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on November 2, 2015:
Makes a clarifying change to the title of the bill.

B. Amendments:

None.

[14] Email correspondence with the Office of the Attorney General (Jan. 15, 2016) (on file with the Senate Judiciary Committee); The Department of Financial Services, Letter from Chief Financial Officer Jeff Atwater (Sept. 29, 2015) (on file with the Senate Judiciary Committee); The Florida Department of Law Enforcement, *2016 FDLE Legislative Bill Analysis* (on file with the Senate Judiciary Committee).
[15] The Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Nov. 2, 2015)

By the Committee on Criminal Justice; and Senators Joyner and Bradley

591-01035-16 2016122c1

A bill to be entitled

An act relating to compensation of victims of wrongful incarceration; reordering and amending s. 961.02, F.S.; defining the term "violent felony"; amending s. 961.04, F.S.; providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to any violent felony, or was serving a concurrent sentence for another felony; amending s. 961.06, F.S.; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation; reenacting s. 961.03(1)(a), (2), (3), and (4), F.S., relating to determination of eligibility for compensation, to incorporate the amendments made to s. 961.04, F.S., in references thereto; reenacting s. 961.055(1), F.S., relating to application for compensation for a wrongfully incarcerated person and exemption from application by nolle prosequi, to incorporate the amendments made to s. 961.06, F.S., in references thereto; providing an effective date.

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

Section 1. Section 961.02, Florida Statutes, is reordered

591-01035-16 2016122c1

and amended to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

(1) "Act" means the Victims of Wrongful Incarceration Compensation Act.

(2) "Department" means the Department of Legal Affairs.

(3) "Division" means the Division of Administrative Hearings.

(7)~~(4)~~ "Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and who is the subject of an order issued by the original sentencing court pursuant to s. 961.03~~, with respect to whom pursuant to the requirements of s. 961.03, the original sentencing court has issued its order~~ finding that the person did not commit ~~neither committed~~ the act or ~~nor the~~ offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.

(4)~~(5)~~ "Eligible for compensation" means that a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.

(5)~~(6)~~ "Entitled to compensation" means that a person meets the definition of the term "eligible for compensation" and satisfies the application requirements prescribed in s. 961.05, and may receive compensation pursuant to s. 961.06.

(6) "Violent felony" means a felony listed in s. 775.084(1)(c)1. or s. 948.06(8)(c).

Section 2. Section 961.04, Florida Statutes, is amended to

read:

961.04 Eligibility for compensation for wrongful incarceration.—A wrongfully incarcerated person is not eligible for compensation under the act if:

(1) Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any violent felony ~~offense~~, or a crime committed in another jurisdiction the elements of which would constitute a violent felony in this state, or a crime committed against the United States which is designated a violent felony, excluding any delinquency disposition;

(2) During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any violent felony ~~offense~~; or

(3) During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.

Section 3. Subsection (2) of section 961.06, Florida Statutes, is amended to read:

961.06 Compensation for wrongful incarceration.—

(2) In calculating monetary compensation under paragraph (1)(a), a wrongfully incarcerated person who is placed on parole or community supervision while serving the sentence resulting from the wrongful conviction and who commits anything less than a violent felony ~~law violation~~ that results in revocation of the parole or community supervision is eligible for compensation for the total number of years incarcerated. A wrongfully incarcerated person who commits a violent felony ~~law violation~~

that results in revocation of the parole or community supervision is ineligible for any compensation under subsection (1).

Section 4. For the purpose of incorporating the amendments made by this act to section 961.04, Florida Statutes, in references thereto, paragraph (a) of subsection (1) and subsections (2), (3), and (4) of section 961.03, Florida Statutes, are reenacted to read:

961.03 Determination of status as a wrongfully incarcerated person; determination of eligibility for compensation.—

(1)(a) In order to meet the definition of a "wrongfully incarcerated person" and "eligible for compensation," upon entry of an order, based upon exonerating evidence, vacating a conviction and sentence, a person must set forth the claim of wrongful incarceration under oath and with particularity by filing a petition with the original sentencing court, with a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. At a minimum, the petition must:

1. State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and

2. State that the person is not disqualified, under the provisions of s. 961.04, from seeking compensation under this act.

(2) The prosecuting authority must respond to the petition within 30 days. The prosecuting authority may respond:

(a) By certifying to the court that, based upon the

petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case at bar can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under the provisions of s. 961.04; or

(b) By contesting the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration, or whether the petitioner is ineligible from seeking compensation under the provisions of s. 961.04.

(3) If the prosecuting authority responds as set forth in paragraph (2)(a), the original sentencing court, based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense, shall certify to the department that the petitioner is a wrongfully incarcerated person as defined by this act. Based upon the prosecuting authority's certification, the court shall also certify to the department that the petitioner is eligible for compensation under the provisions of s. 961.04.

(4)(a) If the prosecuting authority responds as set forth in paragraph (2)(b), the original sentencing court shall make a determination from the pleadings and supporting documentation whether, by a preponderance of the evidence, the petitioner is

ineligible for compensation under the provisions of s. 961.04, regardless of his or her claim of wrongful incarceration. If the court finds the petitioner ineligible under the provisions of s. 961.04, it shall dismiss the petition.

(b) If the prosecuting authority responds as set forth in paragraph (2)(b), and the court determines that the petitioner is eligible under the provisions of s. 961.04, but the prosecuting authority contests the nature, significance or effect of the evidence of actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court shall set forth its findings and transfer the petition by electronic means through the division's website to the division for findings of fact and a recommended determination of whether the petitioner has established that he or she is a wrongfully incarcerated person who is eligible for compensation under this act.

Section 5. For the purpose of incorporating the amendments made by this act to section 961.06, Florida Statutes, in references thereto, subsection (1) of section 961.055, Florida Statutes, is reenacted to read:

961.055 Application for compensation for a wrongfully incarcerated person; exemption from application by nolle prosequi.—

(1) A person alleged to be a wrongfully incarcerated person who was convicted and sentenced to death on or before December 31, 1979, is exempt from the application provisions of ss. 961.03, 961.04, and 961.05 in the determination of wrongful incarceration and eligibility to receive compensation pursuant to s. 961.06 if:

(a) The Governor issues an executive order appointing a special prosecutor to review the defendant's conviction; and

(b) The special prosecutor thereafter enters a nolle prosequi for the charges for which the defendant was convicted and sentenced to death.

Section 6. This act shall take effect October 1, 2016.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER
Democratic Leader
19th District

February 12, 2016

Senator Tom Lee, Chair
Senate Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee:

This is to request that CS/Senate Bill 122, Compensation of Victims of Wrongful Incarceration, be placed on the agenda for the Committee on Appropriations. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

REPLY TO:
❒ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
❒ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

18 Feb 16
Meeting Date

122
Bill Number (if applicable)

Topic Compensation Wrongful Incarceration
Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title ~~204 S. Monroe~~ Innocence Project of Florida

Address ~~Ptt~~ 204 S. Monroe
Street

Phone 577.3032

Tall FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Innocence Project of Fla.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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 Appropriations

BILL:	SB 394
INTRODUCER:	Senator Hays
SUBJECT:	Unlicensed Activity Fees
DATE:	February 17, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Favorable**
2.	Davis	DeLoach	AGG	**Recommend: Favorable**
3.	Davis	Kynoch	AP	**Favorable**

I. Summary:

SB 394 requires the Department of Business and Professional Regulation (department) to waive the $5 unlicensed activity fee, which is charged to all licensees renewing a license issued by the department, if certain benchmarks for the profession's operating account and unlicensed activity account are met. The waiver applies to all licensees in a renewal cycle for the duration of that cycle. The waiver does not apply if a profession has a deficit in its operating account or is projected to have a deficit within five fiscal years.

For the 2016-2017 fiscal year, the bill is estimated to have a negative fiscal impact of $1,588,300 within the department's Professional Regulation Trust Fund and a $127,064 negative fiscal impact to the General Revenue Fund.

II. Present Situation:

The department licenses and regulates businesses and professionals in Florida. The department includes separate divisions and various professional boards that are responsible for carrying out the department's mission to license efficiently and regulate fairly.

Section 20.165, F.S., establishes the organizational structure of the department. There are 12 divisions, which include:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;

- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

There are 15 boards and programs established within the Division of Professions,[1] two boards within the Division of Real Estate,[2] and one board within the Division of Certified Public Accounting.[3] The Florida State Boxing Commission (boxing commission) is also assigned to the department for administrative and fiscal accountability purposes only.[4] The department also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[5]

Regulation of professions is limited under Florida law, to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[6] Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[7]

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[8]

[1] Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers' Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors' Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468.
[2] *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.
[3] *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.
[4] *See* s. 548.003(1), F.S.
[5] *See* s. 455.01(6), F.S.
[6] *See* s. 455.201(2), F.S.
[7] *Id.*
[8] *See* s. 455.201(4)(b), F.S.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative framework for all of the professional boards housed under the department as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[9] When a person is authorized to engage in a profession or occupation in Florida by the department, the department issues a "permit, registration, certificate, or license" to the licensee.[10]

In Fiscal Year 2013-2014, the Division of Accountancy had 37,513 licensees, the Division of Real Estate had 312,715 licensees, and the Board of Professional Engineers had 57,653 licensees.[11] In Fiscal Year 2013-2014, there were 413,401 licensees in the Division of Professions,[12] including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.[13]

Sections 455.203 and 455.213, F.S., establish general licensing provisions for the department, including the authority to charge license fees and license renewal fees. Each board within the department must determine by rule the amount of license fees for its profession, based on estimates of the required revenue to implement regulatory laws.[14]

The department may adopt rules to implement a waiver of renewal fees, when it determines that a profession's trust fund moneys exceed the amount required to cover the necessary functions of

[9] *See* s. 455.203, F.S. The department must also provide legal counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing department staff counsel. *See* s. 455.221(1), F.S.
[10] *See* s. 455.01(4) and (5), F.S.
[11] *See* Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2013-2014*, http://www.myfloridalicense.com/dbpr/os/documents/FY2013-2014AnnualReportProRegCPARE.pdf (last accessed 2015) at 22.
[12] Of the total 413,401 licensees in the Division of Professions, 22,859 are inactive, but all licensees, whether or not active, must pay the $5 unlicensed activity fee. *Id.* at 21-22.
[13] *Id*. at 13.
[14] *See* s. 455.219(1), F.S.

the board (or of the department, when there is no board). However, the waiver period may not exceed two years.[15]

Section 455.2281, F.S., requires that persons who are issued licenses by the department pay a special fee of $5 to support efforts to combat unlicensed activity. The fee is imposed on all initial licenses and renewed licenses, including inactive licenses. The funds of a profession regulated by the department are held in an unlicensed activity account and an operating fund account.

A transfer from the profession's operating fund account to its unlicensed activity account may be authorized if the operating fund account for the profession is not in a deficit and has a reasonable cash balance,[16] in order to inform the public about the consequences of obtaining services from professionals who are not properly licensed.

The department's Unlicensed Activity Program consists of public outreach and education, thorough investigation of complaints, and enforcement and prosecution.[17] The department maintains an educational campaign to inform consumers and licensees about the danger of hiring unlicensed individuals, with an emphasis on compliance rather than discipline of unlicensed offenders. In Fiscal Year 2014-2015, the department received over 5,000 complaints of unlicensed activity. More than 3,300 complaints that met requirements to be pursued resulted in the issuance of more than more than 200 citations[18] and more than 2,300 Notices to Cease and Desist.

Administrative action is taken on those cases not resolved by issuance of a citation or a notice to discontinue the unlicensed activity. The number of fines and administrative actions against unlicensed offenders increased in Fiscal Year 2014-2015 over the prior fiscal year, from 317 to 543 fines and from 168 to 433 actions.[19]

The department's administrative rules include disciplinary guidelines for the imposition of penalties against unlicensed persons.[20] Practicing a profession without holding the required license may result in a fine of $3,000 for a first violation.[21] Various circumstances may be considered in order to reduce or increase fine amounts.[22]

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[15] *Id*. Each board (or the department when there is no board) must ensure that license fees will cover all anticipated costs and a reasonable cash balance will be maintained. If sufficient action is not taken by a board within one year of notification by the department that license fees are projected to be inadequate, the department must set license fees for the board, in order to cover anticipated costs and to maintain the required cash balance.
[16] *See* s. 455.2281, F.S.
[17] *See* Department of Business and Professional Regulation, *Unlicensed Activity Program, Fiscal Year 2014-2015* http://www.myfloridalicense.com/dbpr/reg/documents/ULA14-15FINALAnnualReport.pdf (last accessed Nov. 18, 2015).
[18] *See* s. 455.228(3)(a), F.S., which states the penalty for the unlicensed practice of a profession is a fine of not less than $500 or more than $5,000, or other conditions as established by rule.
[19] *See supra* note 17, at 1-2.
[20] *See* Rule 61-5.007, F.A.C.
[21] *Id*. A second violation may result in a $2,500 fine; third and subsequent violations may result in fines of $5,000.
[22] *Id*. These include the severity of the offense, the number of repetitions of the unlicensed activity, and complaints filed, among others.

Recently, the department engaged in a media campaign to increase awareness of unlicensed activity and the threat to consumers and to professionals who are properly licensed.[23] In addition to promoting the "Report Unlicensed Activity" mobile telephone application, the campaign's objectives were to increase the number of Florida consumers and licensed professionals exposed to information about:

- The professional services that require a license;
- How to verify a license; and
- How to report unlicensed activity.

III. Effect of Proposed Changes:

This bill prohibits the department from imposing the $5 unlicensed activity fee on a licensee during a license renewal for a profession for the duration of that renewal cycle if:

- The unlicensed activity account balance for the profession at the beginning of the fiscal year before the renewal is more than twice the expenditures for unlicensed activity enforcement in the previous two fiscal years; and
- The profession does not have a deficit in its operating account or is not projected to have a deficit in the next five fiscal years.

The bill revises language to meet bill drafting conventions.

The bill provides an effective date of July 1, 2016.

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:

SB 394 provides fees payable by licensees renewing a license issued by the department may be reduced by $5, if the special unlicensed activity fee of $5 authorized in s. 455.2281, F.S., is required to be waived during a profession's qualified license renewal cycle. In order for a profession to qualify for the waiver of the unlicensed activity fee for all licensees in that renewal cycle:

[23] *See supra* note 17, at 20-27.

- The unlicensed activity account balance for the profession at the beginning of the fiscal year before the renewal must be more than twice the expenditures for unlicensed activity enforcement in the previous two fiscal years; and
- The profession may not have a deficit in its operating account or be projected to have a deficit in the next five fiscal years.

B. Private Sector Impact:

If a profession qualifies for waiver of a special unlicensed activity fee of $5 during a renewal cycle, the renewal fees payable by affected licensees in that profession will be reduced by $5. The waiver applies to all licensees in a renewal cycle for that profession for the duration of that cycle. If a profession has a deficit in its operating account or is projected to have a deficit within five fiscal years, the waiver is not applicable, and renewal fees will not be reduced.

C. Government Sector Impact:

The bill requires the department to determine whether a profession qualifies for the waiver of the unlicensed activity fee for all licensees in a license renewal cycle. The department must calculate, for each profession:

- The expenditures made for enforcement against unlicensed activity in the previous two fiscal years; and
- Whether the profession has a deficit in its operating account, or is projected to have a deficit in the next five fiscal years.

The department will be required to modify license renewal information provided to licensees, based on whether a renewal cycle qualifies for a reduction in the special unlicensed activity fee, reducing the renewal fees by $5 for each professional renewing during that cycle.

According to the department, as of July 1, 2015, eight of the 22 professions for which it issues licenses meet the proposed criteria for waiver of the unlicensed activity fee of $5 upon license renewal.[24] The total reduction in renewal fees payable by licensees in a single two-year renewal cycle for all eight professions eligible for the waiver is estimated by the department as $3,193,450. See chart below.[25]

[24] *See* Email from C. Madill, Legislative Coordinator, Department of Business and Professional Regulation, to A. Nicotra, Office of Senator D. Alan Hays and *Professional Board Unlicensed Activity Fee Holiday Projections* chart attached thereto (Oct. 21, 2015)(on file with the Senate Committee on Regulated Industries).
[25] *Id.*

Professional Board Unlicensed Activity Fee Holiday Projections

BOARD	EXPENDITURES: 6/30/2014	EXPENDITURES: 6/30/2015	TOTAL EXPENITURES	ACCOUNT BALANCE: 7/1/2015	Current License Count*	Estimated Savings: 7/1/2015 - 6/30/ 2017
Asbestos Unit	582	1,292	1,874	9,160	495	2,475
Athlete Agents	99	34	133	4,782	364	1,820
Building Code Admin & Inspectors	4,729	2,332	7,061	362,794	9,156	45,780
Board of Cosmetology	335,846	202,684	538,530	2,749,983	268,088	1,340,440
Board of Pilot Commissioners	2	1,079	1,081	1,277	93	465
Board of Landscape Architects	2,465	1,921	4,386	35,245	1,691	8,455
Real Estate Appraisal Board	9,086	4,979	14,065	138,473	7,739	38,695
Real Estate Commission	443,941	525,664	969,605	2,984,588	351,064	1,755,320
Total:						**$3,193,450**

*License counts as of August 12, 2015

The department estimates there will be a reduction in unlicensed activity fee revenue of approximately $1,588,300 in Fiscal Year 2016-2017, $1,603,935 in Fiscal Year 2017-2018, and $1,588,300 in Fiscal Year 2018-2019. There will be a corresponding reduction in the 8 percent service charge sent to the General Revenue Fund of approximately $127,064 in Fiscal Year 2016-2017, $128,315 in Fiscal Year 2017-2018, and $127,064 in Fiscal Year 2018-2019.[26]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 455.2281 of the Florida Statutes.

[26] *See 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 394*, October 23, 2015 (on file with Senate Committee on Regulated Industries) at 3.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Hays

11-00555-16 2016394__

A bill to be entitled

An act relating to unlicensed activity fees; amending s. 455.2281, F.S.; prohibiting the Department of Business and Professional Regulation from imposing a specified fee in certain circumstances; providing for applicability of the waiver; providing an effective date.

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

Section 1. Section 455.2281, Florida Statutes, is amended to read:

455.2281 Unlicensed activities; fees; disposition.—In order to protect the public and to ensure a consumer-oriented department, it is the intent of the Legislature that vigorous enforcement of regulation for all professional activities is a state priority. All enforcement costs should be covered by professions regulated by the department. Therefore, the department shall impose, upon initial licensure and each subsequent renewal ~~thereof~~, a special fee of $5 per licensee,~~.~~ ~~Such fee shall be~~ in addition to all other fees imposed, ~~collected from each licensee~~ to ~~and shall~~ fund efforts to combat unlicensed activity. However, the department may not impose this special fee on a license renewal for any profession whose unlicensed activity account balance, at the beginning of the fiscal year before the renewal, totals more than twice the total of the expenditures for unlicensed activity enforcement efforts in the preceding 2 fiscal years. This waiver applies to all licensees within the profession, and assessment of the special

11-00555-16 2016394__

fee may not begin or resume until the renewal cycle subject to the waiver has ended for all of the licensees in that profession. This waiver does not apply to a profession that has a deficit in its operating account or that is projected to have such a deficit in the next 5 fiscal years. Any profession regulated by the department which offers services that are not subject to regulation when provided by an unlicensed person may use funds in its unlicensed activity account to inform the public of such situation. The board with concurrence of the department, or the department when there is no board, may earmark $5 of the current licensure fee for this purpose, if such board, or profession regulated by the department, is not in a deficit and has a reasonable cash balance. A board or profession regulated by the department may authorize the transfer of funds from the operating fund account to the unlicensed activity account of that profession if the operating fund account is not in a deficit and has a reasonable cash balance. The department shall make direct charges to this fund by profession and may ~~shall~~ not allocate indirect overhead. The department shall seek board advice regarding enforcement methods and strategies prior to expenditure of funds; however, the department may, without board advice, allocate funds to cover the costs of continuing education compliance monitoring under s. 455.2177. The department shall directly credit, by profession, revenues received from the department's efforts to enforce licensure provisions. The department shall include all financial and statistical data resulting from unlicensed activity enforcement and from continuing education compliance monitoring as separate categories in the quarterly management report

provided for in s. 455.219. The department may ~~shall~~ not charge the account of any profession for the costs incurred on behalf of any other profession. With the concurrence of the applicable board and the department, any balance that remains in ~~For~~ an unlicensed activity account~~, a balance which remains~~ at the end of a renewal cycle may~~, with concurrence of the applicable board and the department,~~ be transferred to the operating fund account of that profession.

Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS
11th District

MEMORANDUM

To: Senator Tom Lee, Chair
Committee on Appropriations
CC: Cindy Kynoch, Staff Director
Sharon Bradford, Deputy Staff Director
Ross McSwain, General Counsel and Deputy Staff Director
Alicia Weiss, Committee Administrative Assistant
Lisa Roberts, Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 394 Unlicensed Activity Fees

Date: January 13, 2016

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:
❒ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
❒ 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
❒ 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
❒ 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 394
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID MICA, Jr.

Job Title Legislative Affairs, Director

Address _____
Street

Phone 850-487-4827

_____
City *State* *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Dept. of Business & Professional Regulation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016
Meeting Date

394
Bill Number (if applicable)

Topic Unlicensed Activity Fees

Amendment Barcode (if applicable)

Name Jennifer Green

Job Title President

Address P.O. Box 390
Street

Phone (850)528-8809

Tallahassee FL 32327
City *State* *Zip*

Email jennifer@flsenate.gov

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Institute of CPAs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	SB 422
INTRODUCER:	Senator Benacquisto
SUBJECT:	Health Insurance Coverage For Opioids
DATE:	February 17, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Lloyd	Stovall	HP	**Favorable**
3.	Betta	Kynoch	AP	**Favorable**

I. Summary:

SB 422 allows a health insurance policy providing coverage for opioid analgesic drug products to impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for opioid analgesic drug products without an abuse-deterrence labeling claim. The bill also prohibits a policy from requiring the use of an opioid analgesic without an abuse-deterrent labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product.

The fiscal impact of the bill is indeterminate.

The bill provides an effective date of January 1, 2017.

II. Present Situation:

The abuse of prescription drugs in the United States has been described as an epidemic. Every day in the United States, 44 people die because of prescription opioid overdose.[1] In 2013, there were 16,235 deaths involving prescription opioid overdose.[2] In Florida, 2,922 deaths were attributable to prescription opioids in 2014.[3]

[1] Centers for Disease Control and Prevention, *Prescription Drug Overdose Data* (updated August 16, 2015) http://www.cdc.gov/drugoverdose/data/overdose.html (last visited Nov. 19, 2015).
[2] *Id.*
[3] Medical Examiners Commission, *Drugs Identified in Deceased Persons by Florida Medical Examiners*, 2014 Annual Report (September 2015), https://www.fdle.state.fl.us/Content/Medical-Examiners-Commission/MEC-Publications-and-Forms/Documents/2014-Annual-Drug-Report-FINAL.aspx (last visited Nov. 20, 2015).

Prescription opioid[4] analgesics are a critical component of pain management particularly for treating acute and chronic medical pain, providing humane hospice care for cancer patients, and treating patients in drug treatment programs. When used properly, opioid analgesic drugs provide significant benefits for patients. However, abuse and misuse of these products has created a serious and growing public health problem. In the United States, an estimated 4.5 million[5] individuals use prescription pain medications for nonmedical purposes. Recent studies indicate that pharmaceuticals, especially opioid analgesics, have driven the increase in drug overdose deaths.[6] In 2007, the total United States societal costs of prescription opioid abuse was estimated at $55.7 billion.[7]

Food and Drug Administration Guidance on Abuse-Deterrent Opioids

To reduce the misuse and abuse of prescription drugs, the Food and Drug Administration (FDA) released guidance[8] to assist the pharmaceutical industry in developing new formulations and labeling of opioid drugs with abuse-deterrent properties.[9] The goal of abuse-deterrence products is to limit access or attractiveness of the highly desired active ingredient for abusers while assuring the safe and effective release of the medication for patients. The document provides guidance about the studies that should be conducted to demonstrate that a given formulation has abuse-deterrent properties, how the studies will be evaluated, and what labeling clams may be approved based on the results of the studies.

According to the guidance, opioid analgesics can be abused in a number of ways. For example, they can be swallowed whole, crushed and swallowed, crushed and snorted, crushed and smoked, or crushed, dissolved and injected. Abuse-deterrent formulations should target known or expected routes of abuse for the opioid drug substance for that formulation. As a general framework, the FDA guidance provides that abuse-deterrent formulations are categorized in one of the following groups:

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[4] Medications that fall within this class include hydrocodone (e.g., Vicodin), oxycodone (e.g., OxyContin, Percocet), morphine (e.g., Kadian, Avinza), codeine, and related drugs. Hydrocodone products are the most commonly prescribed for a variety of painful conditions, including dental and injury-related pain. Morphine is often used before and after surgical procedures to alleviate severe pain. Codeine is often prescribed for mild pain. See National Institute on Drug Abuse at http://www.drugabuse.gov/publications/research-reports/prescription-drugs/opioids/what-are-opioids (last accessed Nov. 19, 2015).

[5] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, The NSDUH Report, *Substance and Use and Mental Health Estimates from the 2013 National Survey on Drug Use and Health: Overview of Findings* (September 4, 2014), https://store.samhsa.gov/shin/content/NSDUH14-0904/NSDUH14-0904.pdf (lasted visited Nov. 20, 2015). "Nonmedical use" is defined as the use of prescription-type drugs that were not prescribed for the respondent or use only for the experience or feeling they caused. Nonmedical use of any prescription type drug does not include over-the-counter drugs.

[6] Christopher Jones, et al., *Pharmaceutical Overdose*, United States, 2010, JOURNAL OF AMERICAN MEDICAL ASSOCIATION. 2013;309:657, http://jama.jamanetwork.com/article.aspx?articleid=1653518 (last visited: Nov. 20, 2015).

[7] Birnbaum, H.G., et al., *Societal Costs of Prescription Opioid Abuse, Dependence, and Misuse in the United States*, PAIN MEDICINE. 12:657-667, http://onlinelibrary.wiley.com/doi/10.1111/j.1526-4637.2011.01075.x/epdf (last visited Nov. 20, 2015). The breakout of this estimate includes the following costs: workplace $25.6 billion (46 percent), health care $25 billion (45 percent), and criminal justice $5.1 billion (9 percent). (USD in 2009).

[8] U.S. Department of Health and Human Services, *Abuse-Deterrent Opioids-Evaluation and Labeling*, Guidance for Industry (April 2015), http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm334743.pdf (last visited Nov. 20, 2015).

[9] The FDA has approved four extended release opioids with abuse deterrent labels (Reformulated OxyContin, Embeda ER, Hysingla ER, and Targiniq ER).

- *Physical/Chemical barriers* – Physical barriers can prevent chewing, crushing, cutting, grating, or grinding. Chemical barriers can resist extraction of the opioid using common solvents like water, alcohol, or other organic solvents.
- *Agonist/Antagonist combinations* – An opioid antagonist can be added to interfere with, reduce, or defeat the euphoria associated with abuse. The antagonist can be sequestered and released only upon manipulation of the product. For example, a drug product may be formulated such that the substance that acts as an antagonist is not clinically active when the product is swallowed but becomes active if the product is crushed and injected or snorted.
- *Aversion* – Substances can be added to a product to produce an unpleasant effect if the dosage form is manipulated prior to ingestion or is used at a higher dosage than directed.
- *Delivery System* (including depot injectable formulations and implants) – Certain drug release designs or the method of drug delivery can offer resistance to abuse.
- *New Molecular entities (NME) and prodrugs* – The properties of a NME or a prodrug could include the need for enzymatic activation or other novel effects.
- *Combination* – Two or more of the above methods can be combined to deter abuse.
- *Novel approaches* – Novel approaches or technologies that are not captured in the previous categories.

The increasing use of abuse-deterrent opioids is expected to reduce overall medical costs. One study[10] estimated the potential cost savings from introducing abuse-deterrent opioids may be in the range of $0.6 billion to $1.6 billion per year in the United States. The study notes that cost data was extrapolated from claims data of privately insured national employers. The study also states that privately insured population accounts for approximately 60 percent of the United States population, and the costs and abuse patterns for Medicaid, uninsured individuals, and small employers could be different.

Regulation of Insurers and Health Maintenance Organizations

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.[11] The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA pursuant to part III of ch. 641, F.S.[12]

Cost Containment Measures Used by Insurers and HMOs

Insurers use many cost containment strategies to manage medical and drug spending and utilization. For example, plans may place utilization management requirements on the use of certain drugs on their formulary, such as requiring enrollees to obtain prior authorization from their plan before being able to fill a prescription, requiring enrollees to try first a preferred drug to treat a medical condition before being able to obtain an alternate drug for that condition, or limiting the quantity of drugs that they cover over a certain period.

[10] Birnbaum HG, White, AG, et al. *Development of a Budget-Impact Model to Quantify Potential Cost Savings from Prescription Opioids Designed to Deter Abuse or Ease of Extraction,* APPL HEALTH ECON HEALTH POLICY. 2009; 7(1); 61-70.
[11] Section 20.121(3)(a)1., F.S.
[12] Section 641.21(1), F.S.

Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drug under the plan. A preferred drug list (PDL) is an established list of one or more prescription drugs within a therapeutic class deemed clinically equivalent and cost effective. In order to obtain another drug within the therapeutic class, not part of the PDL, prior authorization is required. Prior authorization for emergency services is not required. Preauthorization for hospital inpatient services is generally required.

III. Effect of Proposed Changes:

Section 1 creates s. 627.64194, F.S., which provides requirements for opioid analgesic drug coverage. The terms "abuse-deterrent opioid analgesic drug product" and "opioid analgesic drug product" are defined. An "abuse-deterrent opioid analgesic drug product" means a brand or generic opioid analgesic drug product approved by the U.S. Food and Drug Administration with an abuse-deterrence labeling claim that indicates the drug product is expected to deter abuse. The term, "opioid analgesic drug product" means a drug product in the opioid analgesic drug class prescribed to treat moderate to severe pain or other conditions in immediate-release, extended release, or long-acting form regardless of whether or not combined with other drug substances to form a single drug product or dosage form.

The bill allows a health insurance policy that provides coverage for opioid analgesic drug products to impose a prior authorization for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for opioid analgesic drug products *without* an abuse-deterrence labeling claim. The bill also prohibits a health insurance policy from requiring the use of an opioid analgesic *without* an abuse-deterrent labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product. Abuse deterrent formulations have characteristics that help prevent widespread abuse by impeding the delivery of their active ingredients thereby reducing the potential for abuse and misuse of the drug.

Section 2 provides an effective date of January 1, 2017.

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 fiscal impact on the private sector is indeterminate. SB 422 will provide patients with greater access to abuse-deterrent opioid analgesic drug products, which is expected to reduce opioid drug misuse, abuse, and diversion. The increased use of abuse deterrent drugs is expected to reduce emergency room and drug treatment costs associated with the misuse or abuse of opioids without such abuse deterrent formulations.

The OIR notes that the bill does not require health insurance plans to have equivalent cost sharing to the policyholder. As a result, the policyholders may incur additional cost sharing if they switch to the abuse-deterrent opioids.[13]

C. Government Sector Impact:

The fiscal impact on the government sector is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.64194 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[13] Office of Insurance Regulation, *Senate Bill 422 Analysis* (Oct. 19, 2015) (on file with the Senate Committee on Health Policy).

By Senator Benacquisto

30-00436A-16 2016422__

A bill to be entitled

An act relating to health insurance coverage for opioids; creating s. 627.64194, F.S.; defining terms; providing that a health insurance policy that covers opioid analgesic drug products may impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the insurer imposes the same requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim; prohibiting such health insurance policy from requiring use of an opioid analgesic drug product without an abuse-deterrence labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product; providing an effective date.

WHEREAS, the Legislature finds that the abuse of opioids is a serious problem that affects the health, social, and economic welfare of this state, and

WHEREAS, the Legislature finds that an estimated 2.1 million people in the United States suffered from substance use disorders related to prescription opioid pain relievers in 2012, and

WHEREAS, the Legislature finds that the number of unintentional overdose deaths from prescription pain relievers has more than quadrupled since 1999, and

WHEREAS, the Legislature is convinced that it is imperative for people suffering from pain to obtain the relief they need while minimizing the potential for negative consequences, NOW, THEREFORE,

30-00436A-16 2016422__

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

Section 1. Section 627.64194, Florida Statutes, is created to read:

627.64194 Requirements for opioid coverage.—

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

(a) "Abuse-deterrent opioid analgesic drug product" means a brand or generic opioid analgesic drug product approved by the United States Food and Drug Administration with an abuse-deterrence labeling claim that indicates the drug product is expected to deter abuse.

(b) "Opioid analgesic drug product" means a drug product in the opioid analgesic drug class prescribed to treat moderate to severe pain or other conditions in immediate-release, extended-release, or long-acting form regardless of whether or not combined with other drug substances to form a single drug product or dosage form.

(2) COVERAGE REQUIREMENTS.—A health insurance policy that provides coverage for opioid analgesic drug products:

(a) May impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim which is covered by the policy.

(b) May not require use of an opioid analgesic drug product without an abuse-deterrence labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product.

Section 2. This act shall take effect January 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR LIZBETH BENACQUISTO
30th District

February 8, 2015

The Honorable President Tom Lee
Senate Appropriations, Chair
430 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 422- Health Coverage for Opioids

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 422, Relating to Health Coverage for Opioids, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto
Senate District 30

Cc: Cindy Kynoch

REPLY TO:
❒ 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-2016
Meeting Date

SB 422
Bill Number (if applicable)

Topic HEALTH INSURANCE COVERAGE FOR OPIOIDS

Amendment Barcode (if applicable)

Name CHRIS NULAND

Job Title CONSULTANT

Address 1000 RIVERSIDE AVE - SUITE 115
Street

Phone 904-355-1555

JACKSONVILLE FL 32204
City *State* *Zip*

Email

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing FLORIDA CHAPTER OF THE AMERICAN COLLEGE OF PHYSICIANS

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

2-18-2016
SEN. APP. 412-K
1:00 PM

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-17-2016
Meeting Date

SB 422
Bill Number (if applicable)

Topic HEALTH INSURANCE COVERAGE FOR OPIOIDS

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DRIVE
Street

Phone 878-7364

TALLAHASSEE FL 32301
City *State* *Zip*

Email

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

17 Feb 2016 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 422

Meeting Date *Bill Number (if applicable)*

Topic Insurance Coverage for Opioids *Amendment Barcode (if applicable)*

Name Mark Fontaine

Job Title Executive Director

Address 2808 Mahan Dr Phone 878-2190

Street

Tallahassee FL 32308 Email mfontaine@fadaa.org

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Florida Alcohol & Drug Abuse Association

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

18 Feb 16
Meeting Date

422
Bill Number (if applicable)

Topic Opioids

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe
Street

Tall Fl 32301
City *State* *Zip*

Phone 577.3032

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 422
Bill Number (if applicable)

Topic Opioid Insurance

Amendment Barcode (if applicable)

Name Larry Gonzalez

Job Title General Counsel

Address 1216 Terrace St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-570-6307

Email lawgonz@earthlink.net

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	SB 444
INTRODUCER:	Senator Montford
SUBJECT:	Small Community Sewer Construction Assistance Act
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Favorable**
2.	Howard	DeLoach	AGG	**Recommend: Favorable**
3.	Howard	Kynoch	AP	**Favorable**

I. Summary:

SB 444 expands grant eligibility to small disadvantaged communities in need of adequate sewer facilities. The bill amends the Small Community Sewer Construction Assistance Act (Act) to broaden the term "financially disadvantaged small community" to include counties and special districts that fall under the same population and per capita annual income parameters as currently required under the Act. Specifically, the bill includes only special districts whose public purpose includes water and sewer services, utility systems and services, or wastewater systems and services.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

The Department of Environmental Protection (DEP) administers grant funds under s. 403.1838, F.S., to assist financially disadvantaged small communities with their needs for adequate sewer facilities. A "financially disadvantaged small community" is defined in statute as a municipality that has a population of 10,000 or fewer, according to the last decennial census, and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce.[1] Per rules adopted by the Environmental Regulation Commission,[2] the DEP may provide grants from funds specifically appropriated for this purpose to financially disadvantaged small communities for up to 100 percent of the costs of planning, designing, constructing, upgrading or replacing wastewater collection, transmission, treatment, disposal,

[1] Section 403.1838(2), F.S.

[2] Section 403.1838(3)(b), F.S. Under the statute, the Environmental Regulation Commission must implement rules that follow specific guidelines, such as requiring that projects are cost-effective, environmentally sound, and implementable.

and reuse facilities, including necessary legal and administrative expenses.[3] The DEP must perform the overview of each grant, and may use up to 2 percent of the grant funds for administration costs.[4]

Small Community Wastewater Construction Grants Program

Projects eligible to receive funds must be associated with wastewater collection, transmission, treatment, or disposal facilities.[5] This includes facilities to reuse reclaimed water from wastewater treatment plants.[6] Stormwater projects are not eligible.[7] Projects must compete with all other projects for funding, and a hearing is held each October to determine which projects are to be funded.[8] The highest priority is given to projects that address the most serious risks to public health, are necessary to achieve compliance, or assist systems most in need based on an affordability index.[9] Projects that eliminate failing septic tanks in areas where at least 10 percent of the septic tanks have failed in the last three years also receive higher priority.[10] A partial match of local funds will be required.[11]

III. Effect of Proposed Changes:

Section 1 amends s. 403.1838, F.S., to broaden the term "financially disadvantaged small community" to include counties and special districts with populations of 10,000 or fewer and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce. For the purposes of the bill, the term "special districts" includes only those special districts whose public purpose is water and sewer services, utility system and services, or wastewater systems and services.

The DEP indicates that by expanding the eligibility requirements, two counties (Liberty and Lafayette), and six special districts (Big Ben Water Authority, Cedar Key Special Water and Sewer District, Immokalee Water and Sewer District, Eastpoint Water and Sewer District, Suwanee Water and Sewer District, and Taylor Coastal Water and Sewer District) will be eligible for future grants.

---

[3] Section 403.1838(3)(a), F.S.
[4] Sections 403.1838(c) and (d), F.S.
[5] Florida Department of Environmental Protection, *Water Pollution Control State Revolving Fund Loan Program Small Community Wastewater Facilities Grants*, http://www.dep.state.fl.us/water/wff/cwsrf/smalcwgp.htm (last visited January 7, 2016).
[6] *Id*.
[7] *Id*.
[8] Florida Department of Environmental Protection, *Small Community Wastewater Construction Grants Program Brochure*, available at http://www.dep.state.fl.us/water/wff/cwsrf/docs/SCG-Brochure.pdf (last visited January 7, 2016).
[9] Florida Department of Environmental Protection, *Water Pollution Control State Revolving Fund Loan Program Small Community Wastewater Facilities Grants*, http://www.dep.state.fl.us/water/wff/cwsrf/smalcwgp.htm (last visited January 7, 2016).
[10] Florida Department of Environmental Protection, *Small Community Wastewater Construction Grants Program Brochure*, available at http://www.dep.state.fl.us/water/wff/cwsrf/docs/SCG-Brochure.pdf (last visited January 7, 2016).
[11] Florida Department of Environmental Protection, *Water Pollution Control State Revolving Fund Loan Program Small Community Wastewater Facilities Grants*, http://www.dep.state.fl.us/water/wff/cwsrf/smalcwgp.htm (last visited January 7, 2016).

Section 2 provides an effective date of July 1, 2016.

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:

None.

C. Government Sector Impact:

SB 444 may provide a positive fiscal impact for those counties and special districts that are eligible for grant funding assistance under the Act. The Department of Environmental Protection (DEP) will limit the projects selected to match the amount of funding expected for the fiscal year, which it estimates to be between $9 and $10 million.

The DEP has requested $21 million for small county wastewater treatment grants in their Fiscal Year 2016-2017 Legislative Budget Request.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.1838 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Montford

3-00575-16 2016444__

A bill to be entitled

An act relating to the Small Community Sewer Construction Assistance Act; amending s. 403.1838, F.S.; redefining the term "financially disadvantaged small community" to include counties and special districts; defining the term "special district"; providing an effective date.

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

Section 1. Subsection (2) of section 403.1838, Florida Statutes, is amended to read:

403.1838 Small Community Sewer Construction Assistance Act.—

(2) The department shall use funds specifically appropriated to award grants under this section to assist financially disadvantaged small communities with their needs for adequate sewer facilities. For purposes of this section, the term "financially disadvantaged small community" means a county, municipality, or special district that has a population of 10,000 or fewer, according to the latest decennial census, and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce. For purposes of this subsection, the term "special district" has the same meaning as provided in s. 189.012 and includes only those special districts whose public purpose includes water and sewer services, utility systems and services, or wastewater systems and services.

Section 2. This act shall take effect July 1, 2016.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD
3rd District

January 26, 2016

Senator Tom Lee, Chair
Senate Appropriations Committee
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee:

I respectfully request that SB 444 be scheduled for a hearing before the Senate Appropriations Committee. Senate Bill 444 would allow some small unincorporated communities/special districts to participate in the Small Community Wastewater Facilities Grant Program.

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

William “Bill” Montford, III
State Senator, District 3

cc: Cindy Kynoch, Staff Director

BJM/mam

REPLY TO:
❒ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
❒ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate’s Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 444
Bill Number (if applicable)

Topic Small Community Sewer Construction Assistance

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Director of Legislative Affairs - FL DEP

Address 3900 Commonwealth Blvd.
Street

Phone

Tallahassee FL 32303
City *State* *Zip*

Email

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing DEP

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	PCS/CS/SB 548 (517060)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Richter
SUBJECT:	Title Insurance
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier/Knudson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 548 increases the limit of risk a title insurer may assume on a single contract to not greater than its surplus as to policyholders. This bill also requires a title insurer to reinsure any excess above the surplus as to policyholders from authorized insurers or reinsurers that may provide reinsurance under s. 624.610, F.S. Currently, the limit of risk is one-half of the company's surplus as to policyholders and title insurers that are required to reinsure any excess may only obtain reinsurance from "approved" insurers.

There is no fiscal impact to state funds.

This bill takes effect July 1, 2016.

II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.[1] Title insurance

[1] *See* s. 624.608, F.S.

serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.[2] Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the Office of Insurance Regulation (OIR).

Limit of Risk

Florida law limits the amount of the risk that a title insurer can assume when providing coverage for a single risk, such as a large commercial real estate project. Section 627.778, F.S., provides that a title insurer may not issue a contract of title insurance if the dollar amount of the risk exceeds one-half of its surplus as to policyholders[3] unless the excess is reinsured by one or more approved insurers.[4] Different states have different rules relating to the amount of risk a title insurer can assume for a single risk. Some states have no single risk limit.[5] A justification for a state having no single risk limit for title insurers is that the risk of a complete loss in a title insurance claim is very low.[6] Claims in title cases occur in approximately one of every 700 to 1,000 policies and only 1-3 percent of those claims exceed policy limits.[7] Most companies have additional review before issuing policies for large commercial transactions so losses on such transactions are expected be lower.[8] Florida has recently had two title insurer insolvencies. According to the DFS, the insolvencies were not related to the single risk limit.[9] The insolvency of K.E.L. Title Insurance Group, for example, was related to theft of funds from real estate transactions and not related to insurance of a large commercial risk.[10]

Authorized Insurers

Section 627.778, F.S., references "approved" insurers. However, "approved" is not defined in the statutes. Section 624.09, F.S., defines an authorized insurer as an insurer with a certificate of authority to transact insurance issued by the OIR.

Section 624.610, F.S., sets forth requirements for reinsurance. An insurer can only receive credit for reinsurance as an asset or a deduction from liability if the reinsurer meets statutory requirements.[11] Section 624.610(3)(a), F.S., requires that credit be allowed for reinsurance when

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[2] *See Lawyers Title Insurance Co. Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4th DCA 2003).
[3] The capital and surplus of an insurance company are sometimes referred to as surplus as regards policyholders or policyholders' surplus. Policyholders' surplus is equal to net admitted assets, or admitted assets minus liabilities. Surplus as to policyholders is determined from the last annual statement filed by the insurer. *See* s. 627.778(2), F.S.
[4] *See* s. 627.778(1), F.S.
[5] According to one commenter, twenty states have no single risk limit for title insurance. *See* James L. Gosdin, Title Insurance: A Comprehensive Overview, pp. 458-60 (2007) https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 12, 2015).
[6] *See* James L. Gosdin, Title Insurance: A Comprehensive Overview, p. 101 (2007)(https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 10, 2015).
[7] *Id*.
[8] *Id*.
[9] Email from the Department of Financial Services to Staff of the Banking and Insurance Committee (on file with the Banking and Insurance Committee).
[10] *See* http://www.myfloridacfo.com/Division/Receiver/company_pdf/541/motion.pdf (last visited on November 12, 2015).
[11] *See* s. 624.310(2), F.S.

the reinsurance is ceded to an authorized insurer. Credit is also allowed for reinsurance when reinsurance is ceded to an "accredited" reinsurer[12] or when reinsurance is ceded to an insurer who maintains a sufficient trust fund for payment of claims.[13]

Reinsurance

Reinsurance is insurance by another insurer of all or part of a risk previously assumed by an insurance company.[14] Section 624.610, F.S., sets forth when the OIR must credit a ceding insurer[15] for reinsurance. Credit for reinsurance results in the insurer being credited with an asset or a deduction from liability.[16] Reinsurance credit is given when the reinsurance is ceded to an assuming insurer that:

- Is a Florida-authorized insurer or reinsurer;
- An accredited reinsurer;[17] or
- A reinsurer that maintains a trust fund[18] in a qualified United States financial institution.

Credit for reinsurance must also be provided if the assuming reinsurer does not meet the above requirements but is reinsuring risks located in jurisdiction in which the reinsurance is required to be purchased by a particular entity by applicable law or regulation of that jurisdiction.[19] The OIR commissioner may also allow credit if the assuming insurer holds a surplus in excess of $250 million, has a secure financial strength rating from at least two statistical rating organizations, and agrees to meet conditions set forth in statute related to the failure to perform duties under the reinsurance agreement and insolvency.[20]

III. Effect of Proposed Changes:

This bill increases the limit of risk a title insurer may incur on a single contract by allowing a title insurer to issue a contract of title insurance if the dollar amount of the risk assumed does not exceed its surplus as to policyholders. Currently the limit of risk is one-half of the company's surplus as to policyholders.

If the limit of risk is exceeded, the bill requires that the excess must be reinsured by one or more authorized insurers or one or more reinsurers that may provide reinsurance under s. 624.610, F.S. Current law requires that any risk assumed in excess of one-half of the company's surplus as to policyholders must be reinsured by "approved" insurers but does not define the term "approved."

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[12] *See* s. 624.310(3)(b), F.S.
[13] *See* s. 624.310(3)(c), F.S.
[14] "Reinsurance," *Merriam-Webster.com*, http://www.merriam-webster.com/dictionary/reinsurance (last accessed Nov. 17, 2015).
[15] The insurer purchasing reinsurance and thus ceding risk to the other insurer.
[16] *See* s. 624.610(2), F.S.
[17] *See* s. 624.610(2)(b), F.S. An accredited reinsurer must submit to the jurisdiction of Florida, submit to this state's authority to examine its books and records, be licensed or authorized to transact insurance or reinsurance in at least one state, and annually file with the OIR its annual and any quarterly statements required in its state of domicile, and maintain a surplus as to policyholders of not less than $20 million.
[18] *See* s. 624.610(2)(c), F.S. The trust fund must maintain minimum surplus requirements and be approved by the insurance regulator where the trust is domiciled or that has accepted principal regulatory oversight of the trust.
[19] *See* s. 624.610(2)(d), F.S.
[20] *See* s. 624.610(2)(e)-(g), F.S.

The bill provides that reinsurance must be provided by "authorized" insurers, which are defined in statute as insurers that have been issued a certificate of authority to transact insurance in Florida by the Office of Insurance Regulation.[21]

This bill takes effect on July 1, 2016.

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:

Proponents of PCS/CS/SB 548 state that increasing the limit of risk will allow title insurers to insure larger commercial risks without purchasing as much reinsurance which would lower costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.778 of the Florida Statutes.

[21] *See* s. 624.09, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on January 13, 2016:
The CS makes adds technical, clarifying language to include authorized reinsurers that provide reinsurance in addition to authorized insurers.

CS by Banking and Insurance on November 17, 2015:
The CS allows a title insurer to obtain reinsurance from reinsurers that may provide reinsurance under s. 624.610, F.S. The filed version of the bill allowed title insurers to purchase reinsurance from any assuming insurer that has a financial strength rating of "A" or higher from A.M. Best or another rating organization approved by the Insurance Commissioner.

B. Amendments:

None.

517060

576-02103-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to title insurance; amending s. 627.778, F.S.; increasing a title insurer's limit of risk from one-half of its surplus as to policyholders to the entirety of its surplus; revising an exception to the limit; providing that the risk limitation does not prohibit ceding portions of the total risk to specified reinsurers; providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (1) of section 627.778, Florida Statutes, are amended to read:

627.778 Limit of risk.—

(1)(a) A title insurer may not issue any contract of title insurance, either as a primary insurer or as a coinsurer or reinsurer, upon an estate, lien, or interest in property located in this state unless:

1. The contract shows on its face the dollar amount of the risk assumed; and

2. The dollar amount of the risk assumed does not exceed ~~one-half of~~ its surplus as to policyholders, unless the excess is simultaneously reinsured in one or more authorized ~~approved~~ insurers or one or more reinsurers that may provide reinsurance under s. 624.610.

(c) This subsection does not prohibit:

1. The simultaneous issuance of policies insuring different

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estates, liens, or interests in the same property, if each of the simultaneous policies excepts the paramount estates, liens, or interests to which the insured estate, lien, or interest is subject and if each of the simultaneous policies conforms to this subsection.

2. Ceding portions of the total risk to authorized insurers or reinsurers that may provide reinsurance under s. 624.610. Insurance ceded, including coinsurance effected, is a retention of risk by the insurer assuming the ceded risk, and not by the insurer ceding the risk.

Section 2. This act shall take effect July 1, 2016.

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 Appropriations

BILL:	CS/CS/SB 548
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Richter
SUBJECT:	Title Insurance
DATE:	February 18, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier/Knudson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.	Betta	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 548 increases the limit of risk a title insurer may assume on a single contract to not greater than its surplus as to policyholders. This bill also requires a title insurer to reinsure any excess above the surplus as to policyholders from authorized insurers or reinsurers that may provide reinsurance under s. 624.610, F.S. Currently, the limit of risk is one-half of the company's surplus as to policyholders and title insurers that are required to reinsure any excess may only obtain reinsurance from "approved" insurers.

There is no fiscal impact to state funds.

This bill takes effect July 1, 2016.

II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.[1] Title insurance

[1] *See* s. 624.608, F.S.

serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.[2] Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the Office of Insurance Regulation (OIR).

Limit of Risk

Florida law limits the amount of the risk that a title insurer can assume when providing coverage for a single risk, such as a large commercial real estate project. Section 627.778, F.S., provides that a title insurer may not issue a contract of title insurance if the dollar amount of the risk exceeds one-half of its surplus as to policyholders[3] unless the excess is reinsured by one or more approved insurers.[4] Different states have different rules relating to the amount of risk a title insurer can assume for a single risk. Some states have no single risk limit.[5] A justification for a state having no single risk limit for title insurers is that the risk of a complete loss in a title insurance claim is very low.[6] Claims in title cases occur in approximately one of every 700 to 1,000 policies and only 1-3 percent of those claims exceed policy limits.[7] Most companies have additional review before issuing policies for large commercial transactions so losses on such transactions are expected be lower.[8] Florida has recently had two title insurer insolvencies. According to the DFS, the insolvencies were not related to the single risk limit.[9] The insolvency of K.E.L. Title Insurance Group, for example, was related to theft of funds from real estate transactions and not related to insurance of a large commercial risk.[10]

Authorized Insurers

Section 627.778, F.S., references "approved" insurers. However, "approved" is not defined in the statutes. Section 624.09, F.S., defines an authorized insurer as an insurer with a certificate of authority to transact insurance issued by the OIR.

Section 624.610, F.S., sets forth requirements for reinsurance. An insurer can only receive credit for reinsurance as an asset or a deduction from liability if the reinsurer meets statutory requirements.[11] Section 624.610(3)(a), F.S., requires that credit be allowed for reinsurance when

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[2] *See Lawyers Title Insurance Co. Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4th DCA 2003).
[3] The capital and surplus of an insurance company are sometimes referred to as surplus as regards policyholders or policyholders' surplus. Policyholders' surplus is equal to net admitted assets, or admitted assets minus liabilities. Surplus as to policyholders is determined from the last annual statement filed by the insurer. *See* s. 627.778(2), F.S.
[4] *See* s. 627.778(1), F.S.
[5] According to one commenter, twenty states have no single risk limit for title insurance. *See* James L. Gosdin, Title Insurance: A Comprehensive Overview, pp. 458-60 (2007) https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 12, 2015).
[6] *See* James L. Gosdin, Title Insurance: A Comprehensive Overview, p. 101 (2007)(https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 10, 2015).
[7] *Id*.
[8] *Id*.
[9] Email from the Department of Financial Services to Staff of the Banking and Insurance Committee (on file with the Banking and Insurance Committee).
[10] *See* http://www.myfloridacfo.com/Division/Receiver/company_pdf/541/motion.pdf (last visited on November 12, 2015).
[11] *See* s. 624.310(2), F.S.

the reinsurance is ceded to an authorized insurer. Credit is also allowed for reinsurance when reinsurance is ceded to an "accredited" reinsurer[12] or when reinsurance is ceded to an insurer who maintains a sufficient trust fund for payment of claims.[13]

Reinsurance

Reinsurance is insurance by another insurer of all or part of a risk previously assumed by an insurance company.[14] Section 624.610, F.S., sets forth when the OIR must credit a ceding insurer[15] for reinsurance. Credit for reinsurance results in the insurer being credited with an asset or a deduction from liability.[16] Reinsurance credit is given when the reinsurance is ceded to an assuming insurer that:

- Is a Florida-authorized insurer or reinsurer;
- An accredited reinsurer;[17] or
- A reinsurer that maintains a trust fund[18] in a qualified United States financial institution.

Credit for reinsurance must also be provided if the assuming reinsurer does not meet the above requirements but is reinsuring risks located in jurisdiction in which the reinsurance is required to be purchased by a particular entity by applicable law or regulation of that jurisdiction.[19] The OIR commissioner may also allow credit if the assuming insurer holds a surplus in excess of $250 million, has a secure financial strength rating from at least two statistical rating organizations, and agrees to meet conditions set forth in statute related to the failure to perform duties under the reinsurance agreement and insolvency.[20]

III. Effect of Proposed Changes:

This bill increases the limit of risk a title insurer may incur on a single contract by allowing a title insurer to issue a contract of title insurance if the dollar amount of the risk assumed does not exceed its surplus as to policyholders. Currently the limit of risk is one-half of the company's surplus as to policyholders.

If the limit of risk is exceeded, the bill requires that the excess must be reinsured by one or more authorized insurers or one or more reinsurers that may provide reinsurance under s. 624.610, F.S. Current law requires that any risk assumed in excess of one-half of the company's surplus as to policyholders must be reinsured by "approved" insurers but does not define the term "approved."

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[12] *See* s. 624.310(3)(b), F.S.
[13] *See* s. 624.310(3)(c), F.S.
[14] "Reinsurance," *Merriam-Webster.com*, http://www.merriam-webster.com/dictionary/reinsurance (last accessed Nov. 17, 2015).
[15] The insurer purchasing reinsurance and thus ceding risk to the other insurer.
[16] *See* s. 624.610(2), F.S.
[17] *See* s. 624.610(2)(b), F.S. An accredited reinsurer must submit to the jurisdiction of Florida, submit to this state's authority to examine its books and records, be licensed or authorized to transact insurance or reinsurance in at least one state, and annually file with the OIR its annual and any quarterly statements required in its state of domicile, and maintain a surplus as to policyholders of not less than $20 million.
[18] *See* s. 624.610(2)(c), F.S. The trust fund must maintain minimum surplus requirements and be approved by the insurance regulator where the trust is domiciled or that has accepted principal regulatory oversight of the trust.
[19] *See* s. 624.610(2)(d), F.S.
[20] *See* s. 624.610(2)(e)-(g), F.S.

The bill provides that reinsurance must be provided by "authorized" insurers, which are defined in statute as insurers that have been issued a certificate of authority to transact insurance in Florida by the Office of Insurance Regulation.[21]

This bill takes effect on July 1, 2016.

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:

Proponents of CS/CS/SB 548 state that increasing the limit of risk will allow title insurers to insure larger commercial risks without purchasing as much reinsurance which would lower costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.778 of the Florida Statutes.

[21] *See* s. 624.09, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:
The CS makes adds technical, clarifying language to include authorized reinsurers that provide reinsurance in addition to authorized insurers.

CS by Banking and Insurance on November 17, 2015:
The CS allows a title insurer to obtain reinsurance from reinsurers that may provide reinsurance under s. 624.610, F.S. The filed version of the bill allowed title insurers to purchase reinsurance from any assuming insurer that has a financial strength rating of "A" or higher from A.M. Best or another rating organization approved by the Insurance Commissioner.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Richter

597-01291-16 2016548c1

A bill to be entitled

An act relating to title insurance; amending s. 627.778, F.S.; increasing a title insurer's limit of risk from one-half of its surplus as to policyholders to the entirety of its surplus; revising an exception to the limit; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 627.778, Florida Statutes, is amended to read:

627.778 Limit of risk.—

(1)(a) A title insurer may not issue any contract of title insurance, either as a primary insurer or as a coinsurer or reinsurer, upon an estate, lien, or interest in property located in this state unless:

1. The contract shows on its face the dollar amount of the risk assumed; and

2. The dollar amount of the risk assumed does not exceed ~~one-half of~~ its surplus as to policyholders, unless the excess is simultaneously reinsured in one or more authorized ~~approved~~ insurers or one or more reinsurers that may provide reinsurance under s. 624.610.

Section 2. This act shall take effect July 1, 2016.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

January 13, 2016

The Honorable Tom Lee, Chair
Senate Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Lee:

CS/CS/Senate Bill 548, relating to Title Insurance, has been referred to the Committee on Appropriations. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Cindy Kynoch, Staff Director

REPLY TO:
❒ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
❒ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
❒ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16
Meeting Date

548
Bill Number (if applicable)

Topic Title Insurance

Amendment Barcode (if applicable)

Name Beth A. Vecchioli (Vetch-ee-ō-lee)

Job Title Sr. Policy Advisor

Address 315 S. Calhoun St, Ste 600
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone 850-425-5623

Email beth.vecchioli@gtlaw.com

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Stewart Title Guaranty Co.

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

548
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic TITLE INSURANCE

Name DOUGLAS A. MANG

Job Title 1424 PIEDMONT DRIVE

Address *Street*

Phone 222-7710

City TALLY *State* FL *Zip* 32301

Email DMANG@MANGLAW.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FIRST AMERICAN TITLE INS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/18/2016
Meeting Date

548
Bill Number (if applicable)

Topic Title Insurance Single Risk Limit

Amendment Barcode (if applicable)

Name John La Joie -

Job Title Senior Operations Counsel

Address 2082 Summit Lake Drive
Street

Phone 850-402-4101

Tallahassee FL 32312
City *State* *Zip*

Email jlajoie@firstam.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing First American Title Insurance Company

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/18/16
Meeting Date

548
Bill Number (if applicable)

Topic Single Limit Risk

Amendment Barcode (if applicable)

Name Alex Overhoff

Job Title Exec. Dir

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Land Title Assoc

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	CS/SB 580
INTRODUCER:	Health Policy Committee and Senator Grimsley
SUBJECT:	Reimbursement to Health Access Settings for Dental Hygiene Services for Children
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Favorable**
3.	Brown	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 580 authorizes the Agency for Health Care Administration (AHCA) to reimburse a health access setting under the Medicaid program for remedial dental services (remedial tasks) delivered by a dental hygienist when provided to a Medicaid recipient younger than 21 years of age. Remedial tasks are defined as intra-oral tasks that do not create unalterable changes in the mouth or contiguous structures, are reversible, and do not expose the patient to increased risks.

This bill has no fiscal impact.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Florida Medicaid Program

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. The program is administered by the AHCA and financed with federal and state funds. Florida has an estimated monthly caseload of over 4 million Floridians enrolled in Medicaid for

Fiscal Year 2015-2016.[1] Of those enrollees, more than 2.1 million are children.[2] The statutory authority for the Medicaid program is contained in ch. 409, F.S.

Federal law establishes the minimum benefit levels to be covered in order to receive federal matching funds. Benefit requirements can vary by eligibility category. For example, more benefits are required for children than for the adult population. Florida's mandatory and optional benefits are prescribed in state law under ss. 409.905 and 409.906, F.S., respectively. Children's dental benefits and authorization for reimbursement and treatment levels are specifically covered under s. 409.906(6), F.S., and provided in more detail in the Medicaid Dental Services Coverage and Limitations Handbook.[3]

Comprehensive dental benefits are required for children under Florida Medicaid's Managed Medical Assistance (MMA) component of the Statewide Medicaid Managed Care (SMMC) program and may be offered by MMA health plans as an expanded benefit for adults. Dental may also be offered as an expanded benefit under the Long Term Care Managed Care (LTCMC) component of SMMC.[4] Dental services delivered through the MMA and LTCMC health plans must comply with the Medicaid Dental Services Coverage and Limitations Handbook as must services delivered through the Medicaid fee-for-service system.

Florida Medicaid currently reimburses dental services provided to Medicaid recipients by a registered dental hygienist who is employed by or in a contractual agreement with a health access setting, as defined under s. 466.003(14), F.S., and is under the general supervision of a dentist as defined under s. 466.003(10), F.S.[5,6] The supervising dentist at the facility where the registered dental hygienist is employed or is under contract, is listed as the treating provider for these services.

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[1] Agency for Health Care Administration, *Florida Medicaid - Presentation to Senate Health and Human Services Appropriations Subcommittee* (October 20, 2015), *available at:* http://ahca.myflorida.com/medicaid/recent_presentations/Florida_Medicaid_to_Senate_HHS_Appropriations_2015-10-20.pdf (last visited Oct. 28, 2015).

[2] Agency for Health Care Administration, *Florida KidCare Enrollment Report, October 2015*(on file with the Senate Committee on Health Policy).

[3] Agency for Health Care Administration, *Florida Medicaid Dental Services Coverage and Limitations Handbook* (November 2011) *available at:* http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/Dental_Services_November_2011_Final_Handbook.pdf (last viewed Oct. 28, 2015).

[4] *See* Agency for Health Care Administration, *Statewide Medicaid Managed Care Plans - Model Contract, Attachment I: Scope of Services* (November 1, 2015) *available at:* http://ahca.myflorida.com/Medicaid/statewide_mc/plans.shtml (last visited Nov. 23, 2015).

[5] A health access setting is defined under the statute as a program or an institution of the Department of Children and Family Services, the Department of Health, the Department of Juvenile Justice, a nonprofit community health center, a Head Start center, a federally qualified health center or look-alike as defined by federal law, a school-based prevention program, a clinic operated by an accredited college of dentistry, or an accredited dental hygiene program in this state if such community service program or institution immediately reports to the Board of Dentistry all violations of ss. 466.027, and 466.028, or other practice act or standard of care violations related to the actions or inactions of a dentist, dental hygienist, or dental assistant engaged in the delivery of dental care in such setting.

[6] "General Supervision" means a dentist authorizes the procedures that are being carried out but is not required to be present when those authorized procedures are being performed under the statutory definition.

Practice of Dentistry

Chapter 466, F.S., addresses the practice of dentistry and dental hygiene. Section 466.024(2), F.S., identifies the specific services that dental hygienists are permitted to perform under specified parameters, including dental cleanings and applications of topical fluoride and sealants.

Legislation to expand the scope of practice of dental hygienists was enacted in 2011, which permitted licensed dental hygienists to perform certain functions without the physical presence, prior examination, or authorization of a dentist, in health access settings.[7] The MMA plans provide health care services through certain health access setting providers as part of their contract obligations with the AHCA, including contracting with county health departments and federally qualified health centers.[8]

However, while the scope of services that could be performed without supervision was expanded for dental hygienists, the 2011 legislation did not specifically permit the health access setting provider to bill Medicaid for these expanded services unless the services are performed under the general supervision of a dentist. Statutory authorization for Medicaid dental reimbursement delivered at a health care access setting by a dental hygienist is addressed separately under s. 409.906(6), F.S.

The administrative rules under Chapter 64B5-16, F.A.C., provide additional guidance as to the level of supervision required for dental hygienists and the tasks that may be delegated or performed at those levels. Under Rule 64B5-16.001, F.A.C., remedial tasks are defined as those intra-oral tasks that do not create unalterable changes in the mouth or contiguous structures, are reversible, and do not expose the patient to increased risks. The rule permits a dentist to delegate any task to a dental hygienist that meets this criteria and where the training and supervision requirements of the rule have also been achieved.

III. Effect of Proposed Changes:

Section 1 amends s. 409.906(6), F.S., to authorize the AHCA to reimburse a health access setting[9] for remedial tasks that a licensed dental hygienist is authorized to perform on a Medicaid recipient under the age of 21. These reimbursable services are provided by a licensed dental hygienist on a Medicaid recipient under an appropriate statutory delegation of duties by a licensed dentist.

Section 2 provides an effective date of July 1, 2016.

[7] *See* Chapter Law 2011-95, ss. 4-8, L.O.F., and s. 466.024(2), F.S.
[8] Agency for Health Care Administration, Statewide Medicaid Managed Care Contract - Attachment II-A: Core Contract Provisions/Managed Medical Assistance Provisions (11/1/2015), *available at:* http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Contracts/2015-11-01/Exhibit_II-A-Managed_Medical_Assistance_MMA_Program_2015-11-01.pdf (last visited Nov. 23, 2015).
[9] *See supra* note 5.

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:

Under CS/SB 580, additional health access settings may benefit from increased revenue resources from the newly reimbursable services. These health access settings may also be able to provide services in a more cost efficient manner through the expanded use of dental hygienists, thereby improving access to certain dental services.

C. Government Sector Impact:

The AHCA indicates that the bill has no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.906 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on December 1, 2015
The CS clarifies that the AHCA may reimburse the health access setting rather than the

dental hygienist for remedial tasks that the licensed dental hygienist is authorized to perform.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Grimsley

588-01767-16 2016580c1

A bill to be entitled

An act relating to reimbursement to health access settings for dental hygiene services for children; amending s. 409.906, F.S.; authorizing reimbursement for children's dental services provided by licensed dental hygienists in certain circumstances; providing an effective date.

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

Section 1. Subsection (6) of section 409.906, Florida Statutes, is amended to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Optional services rendered by providers in mobile units to Medicaid recipients may be restricted or prohibited by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject

588-01767-16 2016580c1

to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled." Optional services may include:

(6) CHILDREN'S DENTAL SERVICES.—The agency may pay for diagnostic, preventive, or corrective procedures, including orthodontia in severe cases, provided to a recipient under age 21, by or under the supervision of a licensed dentist. The agency may also reimburse a health access setting as defined in s. 466.003 for the remedial tasks that a licensed dental hygienist is authorized to perform under s. 466.024(2). Services provided under this program include treatment of the teeth and associated structures of the oral cavity, as well as treatment of disease, injury, or impairment that may affect the oral or general health of the individual. However, Medicaid will not provide reimbursement for dental services provided in a mobile dental unit, except for a mobile dental unit:

(a) Owned by, operated by, or having a contractual agreement with the Department of Health and complying with Medicaid's county health department clinic services program specifications as a county health department clinic services provider.

(b) Owned by, operated by, or having a contractual arrangement with a federally qualified health center and complying with Medicaid's federally qualified health center specifications as a federally qualified health center provider.

(c) Rendering dental services to Medicaid recipients, 21 years of age and older, at nursing facilities.

(d) Owned by, operated by, or having a contractual agreement with a state-approved dental educational institution.

Section 2. This act shall take effect July 1, 2016.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: January 14, 2016

I respectfully request that **Senate Bill #580**, relating to Reimbursement To Health Access Settings For Dental Hygiene Services For Children, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

580
Bill Number (if applicable)

Topic Reimbursements to Health Access Settings

Amendment Barcode (if applicable)

Name Joe Anne Hart

Job Title Dir. of Governmental Affairs

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Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Dental Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	CS/CS/SB 636
INTRODUCER:	Appropriations Committee; Criminal Justice Committee; and Senators Benacquisto and others
SUBJECT:	Evidence Collected in Sexual Offense Investigations
DATE:	February 22, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.	Harkness	Sadberry	ACJ	**Recommend: Favorable**
3.	Harkness	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 636 creates section 943.326, Florida Statutes, which addresses the collection and processing of evidence in sexual offense investigations that may contain DNA evidence.

The bill requires that a sexual offense evidence kit collected in a sexual offense investigation be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is received by a law enforcement agency if a report of the sexual offense is made to the agency, or when the victim or his or her representative requests that the evidence be tested.

Testing of the sexual offense evidence kit must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency approves the kit's destruction.

The victim, or his or her representative, shall be informed of the purpose of testing and of his or her right to demand testing. The victim shall be informed by either the medical provider conducting the physical forensic examination for purposes of evidence collection for a sexual offense evidence kit or, if no kit is collected, a law enforcement agency that collects *other* DNA evidence associated with the offense.

By January 1, 2017, the Florida Department of Law Enforcement (FDLE) and each lab within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, must adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense.

The guidelines and procedures must include:

- Standards for packaging evidence for submission to the laboratories for testing;
- What evidence must be submitted for testing, which would include a collected sexual offense evidence kit and possibly other evidence related to the crime scene;
- Timeframes for evidence submission including the 30 day deadline for collected sexual offense evidence kits as set forth in the bill;
- Timeframes for evidence analysis including the bill's requirement that testing of sexual offense evidence kits must be completed no later than 120 days after submission; and
- Timeframes for evidence comparison to DNA databases.

The bill does not have significant state fiscal impact.

The bill becomes effective July 1, 2016.

II. Present Situation:

Forensic Evidence Collection in Sexual Assault Cases, Submission for DNA Testing

A sexual assault kit (SAK), is a medical kit used to collect evidence from the body and clothing of a victim of rape or other sexual offense during a forensic physical examination. The kit contains tools such as swabs, tubes, glass slides, containers, and plastic bags. These items are used to collect and preserve fibers from clothing, hair, and bodily fluids, which can help identify DNA and other forensic evidence left by a perpetrator. [1]

In Florida, a victim of certain sexual offenses may have a forensic physical examination conducted by a healthcare provider for free regardless of whether the victim reports the offense to law enforcement authorities.

Pursuant to s. 960.28(2), F.S., up to $500 for expenses for a forensic physical examination must be paid for by the Crime Victims' Services Office within the Department of Legal Affairs (DLA) for a victim of sexual battery as defined in ch. 794, F.S., or a lewd or lascivious offense as defined in ch. 800, F.S. Such payment is made regardless of whether the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement.[2] Information received or maintained by the DLA which identifies an alleged victim who seeks payment of such medical expenses is confidential and exempt from the provisions of s. 119.07(1), F.S.[3]

[1] The White House, Office of Communications, *FACT SHEET: INVESTMENTS TO REDUCE THE NATIONAL RAPE KIT BACKLOG AND COMBAT VIOLENCE AGAINST WOMEN*, March 16, 2015, at 1.
[2] Section 960.28(2), F.S.
[3] Section 960.28(4), F.S.

According to protocols developed by the DLA, healthcare providers conducting the forensic physical examination should complete the document entitled "Sexual Assault Kit Form for Healthcare Providers."[4] This document includes a consent form that requires the victim or his or her legal guardian to indicate that he or she consents to a forensic physical examination for the preservation of evidence of a sexual offense.[5] Additionally, the victim or legal guardian must select one of the following two options:

- For Reporting Victims [i.e., victims who choose to report the sexual offense to law enforcement]: I do authorize this medical facility and the examiner to perform all necessary tests, examinations, photography, and treatment, and to supply copies of all pertinent medical laboratory reports, immediately upon completion to the law enforcement agency and the State Attorney's Office having jurisdiction.
- For Non-Reporting Victims [i.e., victims who choose to not report the sexual offense to law enforcement]: I do authorize this medical facility and the examiner to perform all necessary tests, examinations, photography, and treatment at this time.[6]

The DLA protocols provide instructions for sealing the SAK upon completion of the exam and indicate that the SAK must stay with the medical examiner or secured in a locked area with limited access and proper chain of custody procedures until transferred to law enforcement. For a SAK of a non-reporting victim, the protocol states that the medical examiner should check the local area for storage procedures and that a law enforcement agency is recommended for long-term storage.[7, 8]

Generally, law enforcement agencies in Florida submit SAKs for DNA analysis to the statewide criminal analysis laboratory system, which consists of six laboratories operated by the FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties.[9]

In some cases, a law enforcement agency may not submit a SAK for DNA analysis and may instead retain the SAK in evidence storage. Reasons for not analyzing a SAK include: (a) the victim did not want to file a police report regarding the assault (non-reporting victim); (b) the

[4] Florida Department of Legal Affairs, Division of Victim Services and Criminal Justice Programs, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, April 2015, at 13.
[5] Florida Department of Law Enforcement, *Sexual Assault Kit Form for Healthcare Providers, available at* http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx (last visited Nov. 28, 2015).
[6] *Id.*
[7] Florida Department of Legal Affairs, *supra* note 4, at 21; *see also* Florida Department of Law Enforcement, *Instruction List for Forensic Exam Kit, available at* http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx (last visited Nov. 28, 2015).
[8] Chief Frank Fabrizio, who represents the Florida Police Chiefs Association, testified at a Florida Senate hearing that in Orange and Volusia Counties, SAKs for non-reporting victims are stored by a law enforcement agency, but are not submitted to a crime laboratory for analysis. Hearing of the Florida Senate Appropriations Subcommittee on Criminal and Civil Justice, Nov. 3, 2015, *available at* http://www.flsenate.gov/media/videoplayer?EventID=2443575804_2015111024.
[9] Section 943.32, F.S.; *see also* Florida Department of Law Enforcement, *Biology Screening of Sexual Assault Evidence Kits.*

victim no longer wants the investigation to proceed; (c) the case is not being pursued by the state attorney; and (d) the suspect has pled guilty or nolo contendere.[10]

According to information provided by the FDLE, DNA analysis of a SAK requires on average approximately 26.25 hours of crime analyst and supervisor time.[11]

DNA profiles resulting from such analyses are uploaded by the laboratory to its local DNA Index System (DIS), which then uploads the profiles to the state DNA database. From there, DNA profiles are uploaded to the Federal Bureau of Investigation's Combined DIS, referred to as CODIS, which consists of DNA profiles contributed by federal, state, and local participating forensic laboratories. DNA profiles within these local, state, and federal databases are continuously searched against one another to determine whether a match exists.[12]

National Backlog of SAKs Not Submitted for DNA Testing

To better understand the issue of SAKs that have not been submitted for analysis, the National Institute of Justice (NIJ) awarded grants in 2011 to the Houston, Texas Police Department and Wayne County, Michigan Prosecutor's Office.[13] Both entities conducted a census of untested SAKs:[14]

- 6,663 untested SAKs were found in storage at the Houston Police Department.[15] Each of these SAKs were submitted for analysis. As of February 2015, such analyses had resulted in 850 matches identifying the perpetrator and in the prosecutions of 29 offenders.[16]
- 8,707 untested SAKs were found in Detroit.[17] Of these SAKs, approximately 2,000 were analyzed. The analyses resulted in 760 matches identifying the perpetrator, the identification of 188 serial offenders, and 15 convictions.[18]

In July 2015 the USA TODAY newspaper released the results of its own nationwide inventory of untested SAKs. The records of 1,000-plus law enforcement agencies, including some agencies in

[10] These reasons were provided during testimony by Jennifer Pritt, Assistant Commissioner of the Florida Department of Law Enforcement, and Chief Frank Fabrizio, representing the Florida Police Chiefs Association. Hearing of the Florida Senate Appropriations Subcommittee on Criminal and Civil Justice, Nov. 3, 2015, available at http://www.flsenate.gov/media/videoplayer?EventID=2443575804_2015111024.
[11] Florida Department of Law Enforcement, *supra* note 9, at 7.
[12] *Id.* at 7-8; *see also* Federal Bureau of Investigation, *Frequently Asked Questions (FAQs) on the CODIS Program and the National DNA Index System*, https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet (last visited Nov. 28, 2015). Note that a profile developed from a non-reporting victim's SAK is not currently eligible to be loaded into the national database according to FBI standards. *Florida Department of Law Enforcement Sexual Assault Kit Assessment.*
[13] The White House, supra note 1, at 2.
[14] National Institute of Justice, Office of Justice Programs, *Untested Evidence in Sexual Assault Cases*, http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx#determining (last visited Nov. 28, 2015).
[15] *Id.*
[16] Katherine Driessen, *City done with lab testing of rape kit backlog*, Houston Chronicle (February 23, 2015), http://www.chron.com/news/politics/houston/article/City-done-with-lab-testing-of-rape-kit-backlog-6096424.php.
[17] National Institute of Justice, *supra* note 16.
[18] The White House, *supra* note 1, at 2.

Florida, showed at least 70,000 untested SAKS.[19] Many police agencies have no idea how many untested SAKs they have in their property rooms.[20]

Some states have adopted legislation requiring audits to be conducted of the untested SAKs in the possession of law enforcement agencies and reports of such audits to be filed with the state.[21]

In other states, legislation has been adopted which specifies requirements, such as procedures and timeframes, for SAK use, submission, and analysis. For example:

- Colorado enacted legislation effective June 5, 2013, which requires the state's Department of Public Safety to adopt rules that require forensic evidence to be collected when requested by a sexual offense victim, specify standards for what evidence must be submitted to an accredited crime laboratory, and specify time frames for when such evidence must be submitted, analyzed, and compared in DNA databases. The law also directed the department to adopt a plan for prioritizing the analysis of its backlog of SAKs and to include a requirement in its rules after the backlog is resolved that evidence be submitted for analysis within 21 days after receipt by a law enforcement agency.[22]
- Illinois enacted legislation effective September 1, 2010, which requires law enforcement agencies to submit sexual offense evidence collected in connection with an investigation within 10 business days after receipt to an approved crime laboratory and requires crime laboratories to analyze such evidence within six months.[23]
- Ohio adopted legislation effective March 23, 2015, which requires law enforcement agencies to forward the contents of a SAK related to an investigation initiated after the act's effective date to a crime laboratory within 30 days for analysis and directs the crime laboratory to perform the analysis as soon as possible after receipt.[24]

SAKs Not Submitted for DNA Testing in Florida

At the direction of the Legislature, the FDLE has conducted a statewide assessment of SAKs that have not been submitted for DNA analysis by law enforcement.[25] Agencies had access to the online survey from August 15 – December 15, 2015.[26]

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[19] The USA TODAY report covers a fraction of the 18,000 police agencies in the country suggesting a potential for untested SAKs in the hundreds of thousands may exist. http://www.floridatoday/longform/news2015/07/16/untested-rape-kits-evidence-across-usa/299021.

[20] Samara Martin-Ewing, *#TesttheKits: Thousands of rape kits go untested*, WUSA9 TV, http://www.wusa9.com/story/news/local/2015/07/16/testthekits-untested-rape-kits/30230447/.

[21] *See* Arkansas House Bill 1208 (2015) (requiring annual audits of untested SOEKs stored by law enforcement agencies and healthcare providers and submission of reports to the State Crime Laboratory and Legislature); Kentucky Senate Joint Resolution 20 (2015) (directing the state's Auditor of Public Accounts to study the number of untested SOEKs in the possession of law enforcement and prosecutorial agencies and to report such information to the Legislative Research Commission); Virginia Senate Bill 658 (2014) (requiring law enforcement agencies to inventory and report all untested physical evidence recovery kits to the Department of Forensic Science and requiring the Department to report to the General Assembly).

[22] COLO. REV. STAT. §24-33.5-113 (2015).

[23] 725 IL. COMP. STAT. 202/10 and 202/15 (2015).

[24] OHIO REV. CODE ANN. §2933.82 (2015).

[25] *Florida Department of Law Enforcement Sexual Assault Kit Assessment*, http://www.fdle.state.fl.us/docs/SAKResults.pdf.

[26] Id.

Sixty-nine percent of Florida's police departments responded to the survey and 100 percent of the sheriff's offices responded.[27] These 279 law enforcement agencies represent 89 percent of the state's population.[28]

Survey responses indicate that there are 13,435 unsubmitted SAKs in law enforcement evidence storage statewide.[29] Of the 13,435 unsubmitted SAKs, the agencies indicated that 9,484 of them should be submitted for DNA testing.[30] Individual agency guidelines, not state law, dictate which SAKs should be submitted for testing.[31]

The FDLE statewide survey did not specifically request the responding agencies to do a case-by-case analysis of the reasons why all reported SAKs being held in evidence were not submitted for testing.[32] Agencies were asked to identify from a list of five possible reasons (and an "other" category) provided in the survey why a SAK may not have been submitted.[33] Among the reasons a SAK may not have been submitted was that the victim was a non-reporting victim.[34]

The survey asked (and the agencies responded):

> Please indicate the reasons for not submitting sexual assault kits (mark all that apply):
> 41% - victim decided not to proceed
> 31% - case not being prosecuted by State Attorney's Office
> 20% - suspect pled guilty/no contest
> 18% - non-reporting victim
>
> A summary of "other reasons" written in by agencies included: allegation unfounded, recanted; no issue of identification; suspect convicted on other charges; did not recognize the evolution of DNA testing; victim deceased.[35]

The FDLE Plan for Analyzing Backlog of Unsubmitted SAKs

Part of the report by the FDLE on the SAK Assessment includes alternatives for analyzing and uploading the results of the unsubmitted SAK backlog. It should be remembered that the FDLE's crime labs are only part of the statewide criminal analysis laboratory system. The entire system consists of six laboratories operated by the FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties.

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[27] *Id*.
[28] *Id*.
[29] *Id*.
[30] *Id*.
[31] *Id*.
[32] *Id*.
[33] *Id*.
[34] *Id*.; (Note: There was an attempt by the survey to gather specific numbers from the agencies as to how many SAKs were being held in evidence only because the victim was a non-reporting victim, but the accuracy of this quantification by some of the agencies is somewhat unclear based upon other responses given by the agencies and the wording of the survey.)
[35] *Id*.

The Indian River lab is a regional lab which provides forensic services to Indian River, Martin, Okeechobee, and St. Lucie counties.[36] The FDLE alternative plans regarding the SAK backlog relate only to those cases that should come to an FDLE lab, not those that will be analyzed by local labs.

The FDLE suggests that a comprehensive business plan which incorporates DNA analysis of the backlog of untested SAKs should consider:

- The recent bulk submission of 2,000 older SAKs;
- The remaining 6,600 untested backlog of SAKs within the FDLE lab jurisdiction accounted for in the survey of law enforcement agencies;
- Current incoming casework;
- Increasing biology/DNA evidence submissions anticipated by the FDLE over time;
- Issues regarding getting and keeping qualified lab personnel;
- The acquisition of equipment that can make the lab process more efficient;
- Increased lab capacity; and
- The FDLE's ability to outsource selected cases.

Additionally, the FDLE suggests that agencies should be encouraged to develop formal policies and standardized procedures for collecting, submitting, and tracking SAKs in order to limit the impact to the statewide lab system.[37]

III. Effect of Proposed Changes:

The bill creates s. 943.326, F.S., which addresses the collection and processing of evidence in sexual offense investigations which may contain DNA evidence. The bill states that the timely submission and testing of sexual assault evidence kits is a core public safety issue.

The bill requires that a sexual offense evidence kit collected in a sexual offense investigation be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is received by a law enforcement agency if a report of the sexual offense is made to the agency, or when the victim or his or her representative requests that the evidence be tested.

Testing of the sexual offense evidence kit must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system. The testing requirement is met when a member of the statewide criminal analysis laboratory system tests the contents of the kit in an attempt to identify the foreign DNA attributable to a suspect.

A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency approves the kit's destruction.

The victim, or his or her representative, shall be informed of the purpose of testing and of his or her right to demand testing. The victim shall be informed by either the medical provider conducting the physical forensic examination for purposes of evidence collection for a sexual

[36] Section 943.35, F.S.
[37] *Florida Department of Law Enforcement Sexual Assault Kit Assessment*, http://www.fdle.state.fl.us/docs/SAKResults.pdf.

offense evidence kit or, if no kit is collected, a law enforcement agency that collects *other* DNA evidence associated with the offense.

If probative information is obtained from testing the sexual offense evidence kit then the examination of other evidence directly related to the crime scene should be based upon the potential evidentiary value to the case as cooperatively determined by the investigating agency, laboratory, and the prosecutor.

By January 1, 2017, the FDLE and each lab within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, must adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense.

The guidelines and procedures must include:
- Standards for packaging evidence for submission to the laboratories for testing;
- What evidence must be submitted for testing, which would include a collected sexual offense evidence kit and possibly other evidence related to the crime scene;
- Timeframes for evidence submission including the 30 day deadline for collected sexual offense evidence kits as set forth in the bill;
- Timeframes for evidence analysis including the bill's requirement that testing of sexual offense evidence kits must be completed no later than 120 days after submission; and
- Timeframes for evidence comparison to DNA databases.

The newly-created s. 943.326, F.S. does not create a cause of action or create rights for a person to challenge the admission of evidence or create an action for damages or relief for a violation of the new section of law.

The bill becomes effective on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution, states that county and municipality governments are not bound by any general law requiring one or more county or municipality governments to spend funds, unless it satisfies certain exemptions or exceptions. One such exemption is that the law will have an "insignificant fiscal impact."

The term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. The 2010 United States census, which contains the most recent federal census data, indicates that the Florida population is 18,801,310.[38] A bill having a statewide fiscal impact on counties and municipalities in aggregate or in excess of $1.88 million would be characterized as a mandate.

[38] U.S. Census Bureau, 2010 Census Interactive Population Search, http://www.census.gov/2010census/popmap/ipmtext.php?fl=12 (last visited Nov. 30, 2015).

The bill's requirements for SAK submission to laboratories may require the expenditure of funds by the counties where the five local laboratories are located if state funding for these laboratories is not available. Currently, such expenditures are indeterminate.

One of the exceptions to the application of Art. VII, s. 18(a) of the Florida Constitution, is a law that applies to all persons similarly situated, including state and local governments. It is anticipated that the FDLE will also see increased evidence testing costs so it appears as if the bill meets the exception, and the only other Constitutional requirement is that the Legislature determine whether the bill fulfills an important state interest. The bill contains a finding of important state interest on lines 59-61.

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:

None.

C. Government Sector Impact:

CS/CS/SB 636 does not impose any requirements that would result in a fiscal impact to the FDLE. The bill establishes a 120-day time limit for the testing of sexual offense evidence kits; however, the FDLE currently processes serology evidence well within this new standard. As a result, the bill's requirements do not require additional staffing or resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.326 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:
The committee substitute restructures lines 84-87 of the bill for clarification and simplification, but does not alter the content.

CS by Criminal Justice on January 25, 2016:

- Creates or modifies timeframes within which sexual offense evidence kits must be submitted for testing (30 days) and have the testing completed (120 days), which are triggered by the alleged victim making a report with law enforcement or requesting testing;
- Requires safe storage of collected sexual offense evidence kits;
- Collected kits are required to be retained until the prosecuting agency approves their destruction;
- Eliminates rule-making by the FDLE for handling sexual offense evidence kits and substitutes a collaboration between the FDLE, local labs in the statewide system, and the Florida Council Against Sexual Violence to adopt and disseminate guidelines and procedures;
- Specifies minimum requirements for the guidelines and procedures;
- Eliminates the reporting requirement of the FDLE by the original bill;
- Provides for the handling of other evidence related to the alleged crime scene; and
- Specifies that the bill does not create a cause of action or any individual rights or other relief for a violation of the new section of law.

B. Amendments:

None.

763638

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Benacquisto) recommended the following:

Senate Amendment

Delete lines 84 - 87
and insert:
(5) A violation of this section does not create:
(a) A cause of action or a right to challenge the admission of evidence.
(b) A cause of action for damages or any other relief.

By the Committee on Criminal Justice; and Senator Benacquisto

591-02537-16 2016636c1

A bill to be entitled

An act relating to evidence collected in sexual offense investigations; creating s. 943.326, F.S.; requiring that a sexual offense evidence kit or other DNA evidence be submitted to a member of the statewide criminal analysis laboratory system within a specified timeframe after specified occurrences; requiring a medical provider or law enforcement agency to inform an alleged victim of a sexual offense of certain information relating to sexual offense evidence kits; requiring the retention of specified evidence; requiring adoption and dissemination of guidelines and procedures by certain entities by a specified date; requiring the testing of sexual offense evidence kits within a specified timeframe after submission to a member of the statewide criminal analysis laboratory; providing requirements for such guidelines and procedures; providing construction; providing an effective date.

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

Section 1. Section 943.326, Florida Statutes, is created to read:

943.326 DNA evidence collected in sexual offense investigations.—

(1) A sexual offense evidence kit, or other DNA evidence if a kit is not collected, must be submitted to a member of the statewide criminal analysis laboratory system under s. 943.32 for forensic testing within 30 days after:

(a) Receipt of the evidence by a law enforcement agency if a report of the sexual offense is made to the law enforcement

591-02537-16 2016636c1

agency; or

(b) A request to have the evidence tested is made to the medical provider or the law enforcement agency by:

1. The alleged victim;

2. The alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor; or

3. The alleged victim's personal representative, if the alleged victim is deceased.

(2) An alleged victim or, if applicable, the person representing the alleged victim under subparagraph (1)(b)2. or subparagraph (1)(b)3. must be informed of the purpose of submitting evidence for testing and the right to request testing under subsection (1) by:

(a) A medical provider conducting a forensic physical examination for purposes of a sexual offense evidence kit; or

(b) A law enforcement agency that collects other DNA evidence associated with the sexual offense if a kit is not collected under paragraph (a).

(3) A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency has approved its destruction.

(4) By January 1, 2017, the department and each laboratory within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, shall adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence that is obtained in connection with an alleged sexual offense. The timely submission and testing of sexual offense evidence kits is a core public safety issue. Testing of sexual offense evidence

kits must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

(a) The guidelines and procedures must include the requirements of this section, standards for how evidence is to be packaged for submission, what evidence must be submitted to a member of the statewide criminal analysis laboratory system, and timeframes for when the evidence must be submitted, analyzed, and compared to DNA databases.

(b) The testing requirements of this section are satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the sexual offense evidence kit in an attempt to identify the foreign DNA attributable to a suspect. If a sexual offense evidence kit is not collected, the laboratory may receive and examine other items directly related to the crime scene, such as clothing or bedding or personal items left behind by the suspect. If probative information is obtained from the testing of the sexual offense evidence kit, the examination of other evidence should be based on the potential evidentiary value to the case and determined through cooperation among the investigating agency, the laboratory, and the prosecutor.

(5) This section does not create a cause of action or create any rights for an individual to challenge the admission of evidence or create a cause of action for damages or any other relief for a violation of this section.

Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR LIZBETH BENACQUISTO
30th District

February 10, 2016

The Honorable Tom Lee
Senate Appropriations, Chair
430 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 636- Rape Kit Testing

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 636, Relating to Rape Kit Testing, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto
Senate District 30

Cc: Cindy Kynoch

REPLY TO:
❒ 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.18.16
Meeting Date

436
Bill Number (if applicable)

Topic EVIDENECE COLLECTED IN SEX ASSAULT INVESTIGATIONS

Amendment Barcode (if applicable)

Name RON DRAA

Job Title DIRECTOR OF EXTERNAL AFFAIRS

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Email RONALDDRAA@FDLE.STATE.FL.US

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FDLE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

636
Bill Number (if applicable)

Topic Evidence Collected in Sexual Assault Investigations *Amendment Barcode (if applicable)*

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Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Council Against Sexual Violence

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

636
Bill Number (if applicable)

Topic Sexual Assault Investigations

Amendment Barcode (if applicable)

Name Tim Stanfield

Job Title

Address 101 N. Monroe St
Street

Phone 681 4220

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB636
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Lauren's Kids

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	CS/CS/CS/SB 676
INTRODUCER:	Appropriations Committee; Banking and Insurance Committee; Health Policy Committee; and Senator Grimsley
SUBJECT:	Access to Health Care Services
DATE:	February 22, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Johnson	Knudson	BI	**Fav/CS**
3.	Brown	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 676 authorizes physician assistants (PAs) and advanced registered nurse practitioners (ARNPs) to prescribe controlled substances under current supervisory standards for PAs and protocols for ARNPs beginning January 1, 2017, and creates additional statutory parameters for their controlled substance prescribing. Under the bill, an ARNP's and PA's prescribing privileges for controlled substances listed on Schedule II are limited to a seven-day supply and do not include the prescribing of psychotropic medications for children under 18 years of age, unless prescribed by an ARNP who is a psychiatric nurse, and may be limited by the controlled substance formularies that impose additional limitations on PA or ARNP prescribing privileges for specific medications. An ARNP or PA may not prescribe controlled substances in a pain management clinic. The bill requires PAs and ARNPs to complete three hours of continuing education biennially on the safe and effective prescribing of controlled substances.

Beginning January 1, 2017, health insurers, health maintenance organizations, Medicaid managed plans, and pharmacy benefits managers, which do not use an online prior authorization form, must use a standardized prior authorize form that the Financial Services Commission adopts by rule. If a health insurer or health maintenance organization verifies the eligibility of an insured at the time of treatment, it may not retroactively deny a claim because of the insured's ineligibility.

The bill requires a hospital to notify each obstetrical physician with privileges at the facility at least 90 days before it closes its obstetrical department or ceases to provide obstetrical services. The bill also repeals a provision designating certain hospitals as "provider hospitals," which have special requirements for cesarean section operations that are paid for with state or federal funds.

The bill provides that s. 464.012, F.S., shall be known as "The Barbara Lumpkin Prescribing Act."

The bill is estimated to have no fiscal impact.

Most of the bill becomes effective upon becoming a law. However, the authority for a PA or an ARNP to prescribe controlled substances in accordance with the bill becomes effective January 1, 2017.

II. Present Situation:

Unlike all other states, Florida does not allow advanced registered nurse practitioners (ARNPs) to prescribe controlled substances and is one of two states that does not allow physician assistants (Pas) to prescribe controlled substances.[1] States have varying authority with respect to the schedules[2] from which an ARNP or PA may prescribe, as well as the performance of additional functions by ARNPs and PAs, such as dispensing, administering, or handling samples.

Physician Shortages

According to a recent study commissioned by the Safety Net Hospital Alliance of Florida,[3] Florida's total current supply of primary care physicians falls short of the national average of physicians per patient by approximately six percent. Under a traditional definition of primary care specialties (i.e., general and family practice, general internal medicine, general pediatrics and geriatric medicine), supply falls short of demand by approximately three percent.

Regulation of Physician Assistants in Florida

Chapter 458, F.S., sets forth the provisions for the regulation of the practice of allopathic medicine by the Board of Medicine (BOM). Chapter 459, F.S., similarly sets forth the provisions for the regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine (BOOM). PAs are regulated by both boards. Licensure of PAs is overseen jointly by the boards

[1] DEA Diversion Control, U.S. Department of Justice, *Mid-Level Practitioners Authorization by State* (last updated November 10, 2015) *available at* http://www.deadiversion.usdoj.gov/drugreg/practioners/mlp_by_state.pdf (last visited Feb. 1, 2016). Kentucky does not allow PAs to prescribe controlled substances.
[2] Controlled substances are assigned to Schedules I - V based on their accepted medical use and potential for abuse.
[3] IHS Global Inc., *Florida Statewide and Regional Physician Workforce Analysis: Estimating Current and Forecasting Future Supply and Demand*, (January 28, 2016) *available at* https://ahca.myflorida.com/medicaid/Finance/finance/LIP-DSH/GME/docs/FINAL_Florida_Statewide_and_Regional_Physician_Workforce_Analysis.pdf, (last visited Feb. 1, 2016).

through the Council on Physician Assistants.[4] During the 2014-2015 state fiscal year, there were 6,744 in-state, actively licensed PAs in Florida.[5]

Physician Assistants are trained and required by statute to work under the supervision and control of allopathic or osteopathic physicians.[6] The BOM and the BOOM have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct[7] and indirect[8] supervision. A supervising physician's decision to permit a PA 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. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.[9] Each physician, or group of physicians supervising a licensed PA, must be qualified in the medical areas in which the PA is to work and is individually or collectively responsible and liable for the performance and the acts and omissions of the PA.[10]

Current law allows a supervisory physician to delegate authority to prescribe or dispense any medication used in the physician's practice, except controlled substances, general anesthetics, and radiographic contrast materials.[11] However, the law allows a supervisory physician to delegate authority to a PA to order any medication, including controlled substances, general anesthetics, and radiographic contrast materials, for a patient during the patient's stay in a facility licensed under ch. 395, F.S.[12]

[4] The council consists of three physicians who are members of the Board of Medicine; one physician who is a member of the Board of Osteopathic Medicine; and a physician assistant appointed by the State Surgeon General. (s. 458.348(9), F.S. and s. 459.022(9), F.S.)
[5] Florida Dep't of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2014-2015*, p. 11, *available at* http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1415.pdf, (last visited Feb. 1, 2016).
[6] Sections 458.347(4), and 459.022(4), F.S.
[7] "Direct supervision" requires the physician to be on the premises and immediately available. (*See* Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.).
[8] "Indirect supervision" requires the physician to be within reasonable physical proximity. (Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.
[9] Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.
[10] Sections 458.347(3) and (15) and 459.022(3) and (15), F.S.
[11] Sections 458.347(4)(e) and (f)1., and 459.022(4)(e)., F.S.
[12] *See* s. 395.002(16), F.S. The facilities licensed under chapter 395 are hospitals, ambulatory surgical centers, and mobile surgical facilities.

Regulation of Advanced Registered Nurse Practitioners in Florida

Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (BON).[13] During the 2014-2015 fiscal year, there were 18,276 in-state, actively licensed ARNPs in Florida.[14]

An ARNP is a licensed nurse who is certified in advanced or specialized nursing.[15] Florida recognizes three types of ARNPs: nurse practitioners (NP), certified registered nurse anesthetists (CRNA), and certified nurse midwives (CNM).[16] To be certified as an ARNP, a nurse must hold a current license as a registered nurse[17] and submit proof to the BON that the ARNP applicant meets one of the following requirements:[18]

- Satisfactory completion of a formal, post-basic educational program of specialized or advanced nursing practice;
- Certification by an appropriate specialty board;[19] or
- Completion of a master's degree program in the appropriate clinical specialty with preparation in specialty-specific skills.

Advanced or specialized nursing acts may only be performed under the protocol of a supervising physician or dentist. Within the established framework of the protocol, an ARNP may:[20]

- Monitor and alter drug therapies;
- Initiate appropriate therapies for certain conditions; and
- Order diagnostic tests and physical and occupational therapy.

The statute further describes additional acts that may be performed within an ARNP's specialty certification (CRNA, CNM, and NP).[21]

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[13] The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least 4 years. Of those seven members, one must be an advanced registered nurse practitioner, one a nurse educator at an approved nursing program, and one a nurse executive. Three members of the BON must be licensed practical nurses who reside in the state and have engaged in the practice of practical nursing for at least 4 years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older. *See* s. 464.004(2), F.S.

[14] *Supra*, note 5. Certified Nurse Specialists account for 26 of the in-state actively licensed ARNPs.

[15] "Advanced specialized nursing practice" is defined as the performance of advanced-level nursing acts approved by the BON which, by virtue of postbasic specialized education, training and experience, are appropriately performed by an ARNP. (*See* s. 464.003(2), F.S.)

[16] Section 464.003(3), F.S. Florida certifies clinical nurse specialists as a category distinct from ARNPs. (*See* ss. 464.003(7) and 464.0115, F.S.).

[17] Practice of professional nursing. (*See* s. 464.003(20), F.S.)

[18] Section 464.012(1), F.S.

[19] Specialty boards expressly recognized by the BON: Council on Certification of Nurse Anesthetists, or Council on Recertification of Nurse Anesthetists; American College of Nurse Midwives; American Nurses Association (American Nurses Credentialing Center); National Certification Corporation for OB/GYN, Neonatal Nursing Specialties; National Board of Pediatric Nurse Practitioners and Associates; National Board for Certification of Hospice and Palliative Nurses; American Academy of Nurse Practitioners; Oncology Nursing Certification Corporation; American Association of Critical-Care Nurses Adult Acute Care Nurse Practitioner Certification. (Rule 64B9-4.002(2), F.A.C.)

[20] Section 464.012(3), F.S.

[21] Section 464.012(4), F.S.

An ARNP must meet financial responsibility requirements, as determined by rule of the BON, and the practitioner profiling requirements.[22] The BON requires professional liability coverage of at least $100,000 per claim with a minimum annual aggregate of at least $300,000 or an unexpired irrevocable letter of credit in the same amounts payable to the ARNP.[23]

Florida does not allow ARNPs to prescribe controlled substances.[24] However, s. 464.012(4)(a), F.S., provides express authority for a CRNA to order certain controlled substances "to the extent authorized by the established protocol approved by the medical staff of the facility in which the anesthetic service is performed."

Educational Preparation

Physician Assistants[25]

Physician assistant education is modeled on physician education. PA programs are accredited by the Accreditation Review Commission on Education for the Physician Assistant. All PA programs must meet the same set of national standards for accreditation. PA program applicants must complete at least two years of college courses in basic science and behavioral science as a prerequisite to PA training. The average length of PA education programs is about 26 months. A student begins his or her course of study with a year of basic medical science classes (anatomy, pathophysiology, pharmacology, physical diagnosis, etc.) Then the student enters the clinical phase of training, which includes classroom instruction and clinical rotations in medical and surgical specialties. PA students, on average, complete 48.5 weeks of supervised clinical practice by the time they graduate.

All PA educational programs include pharmacology courses, and, nationally, the average amount of required formal classroom instruction in pharmacology is 75 hours. This does not include instruction in pharmacology that students receive during clinical medicine coursework and clinical clerkships. Based on national data, the mean amount of total instruction in clinical medicine is 358.9 hours, and the average length of required clinical clerkships is 48.5 weeks. A significant percentage of time is focused on patient management. Coursework in pharmacology addresses, but is not limited to, pharmacokinetics, drug interactions, adverse effects, contraindications, indications, and dosage.

Advanced Registered Nurse Practitioners[26]

Applicants for Florida licensure as ARNPs who graduated on or after October 1, 1998, must have completed requirements for a master's degree or post-master's degree.[27] Applicants who graduated before that date may be or may have been eligible through a certificate program.[28]

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[22] Sections 456.0391 and 456.041, F.S.
[23] Rule 64B9-4.002(5), F.A.C.
[24] Sections 893.02(21) and 893.05(1), F.S.
[25] *See* American Academy of Physician Assistants, *PAs as Prescribers of Controlled Medications – Issue Brief* (June 2014) *available at* https://www.aapa.org/WorkArea/DownloadAsset.aspx?id=2549 (last viewed Feb. 1, 2016).
[26] Rule 64B9-4.003, F.A.C.
[27] Florida Board of Nursing, *ARNP Licensure Requirements* http://floridasnursing.gov/licensing/advanced-registered-nurse-practitioner/, (last visited Feb.1, 2016).
[28] *Id.*, and s. 464.012(1), F.S.

The curriculum of a program leading to an advanced degree must include, among other things:

- Theory and directed clinical experience in physical and biopsychosocial assessment;
- Interviewing and communication skills relevant to obtaining and maintaining a health history;
- Pharmacotherapeutics, including selecting, prescribing, initiating, and modifying medications in the management of health and illness;
- Selecting, initiating, and modifying diets and therapies in the management of health and illness;
- Performance of specialized diagnostic tests that are essential to the area of advanced practice;
- Differential diagnosis pertinent to the specialty area;
- Interpretation of laboratory findings;
- Management of selected diseases and illnesses;
- Professional socialization and role realignment;
- Legal implications of the advanced nursing practice and nurse practitioner role;
- Health delivery systems, including assessment of community resources and referrals to appropriate professionals or agencies; and
- Providing emergency treatments.

The program must provide a minimum of 500 hours (12.5 weeks) of preceptorship/supervised clinical experience[29] in the performance of the specialized diagnostic procures that are essential to practice in that specialty area.

Drug Enforcement Agency Registration

The Drug Enforcement Administration (DEA) within the U.S. Department of Justice grants practitioners federal authority to handle controlled substances. However, a DEA-registered practitioner may only engage in those activities that are authorized under state law for the jurisdiction in which the practice is located.[30]

According to requirements of the DEA, a prescription for a controlled substance may be issued only by a physician, dentist, podiatrist, veterinarian, mid-level practitioner,[31] or other registered practitioner who is:

- Authorized to prescribe controlled substances by the jurisdiction in which the practitioner is licensed to practice;
- Registered with the DEA or exempted from registration; or
- An agent or employee of a hospital or other institution acting in the normal course of business or employment under the registration of the hospital or other institution which is registered in lieu of the individual practitioner being registered provided that additional requirements are met, including:[32]

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[29] Preceptorship/supervised clinical experience must be under the supervision of a qualified preceptor, who is defined as a practicing certified ARNP, a licensed medical doctor, osteopathic physician, or a dentist. *See* Rule 64B9-4.001(13), F.A.C.
[30] U.S. Department of Justice, Drug Enforcement Administration, *Practitioner's Manual*, (August 2006), p. 7, *available at* http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract_manual012508.pdf, (last visited Feb. 1, 2016).
[31] Examples of mid-level practitioners include, but are not limited to: nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, and physician assistants.
[32] *Supra*, note 30, at 18.

- The dispensing, administering, or prescribing must be in the usual course of professional practice;
- The practitioner must be authorized to do so by the state in which he or she practices;
- The hospital or other institution must verify that the practitioner is permitted to administer, dispense, or prescribe controlled substances within the state;
- The practitioner must act only within the scope of employment in the hospital or other institution;
- The hospital or other institution must authorize the practitioner to administer, dispense, or prescribe under its registration and must assign a specific internal code number for each practitioner; and
- The hospital or other institution must maintain a current list of internal codes for the corresponding practitioner.[33]

Peer Review of Publically Funded C-Sections

Section 383.336, F.S., relates to public health and maternal and infant health care where all or part of the costs are paid for by state or federal funds administered by the state. It defines a "provider hospital" as one in which there are 30 or more births per year paid for in part, or in full, by state or federal funds. It directs the State Surgeon General, in consultation with the BOM and the Florida Obstetric and Gynecologic Society, to establish practice parameters for physicians in provider hospitals who perform caesarean sections and requires each provider hospital to establish a peer review board to conduct monthly reviews of every publically-funded caesarean section performed since the previous review.

Beginning in 2014, hospitals that are accredited by the Joint Commission and which performed more than 1,100 births per year were required to report on certain cesarean sections performed in the hospital as a part of their perinatal core measure set. Effective with January 1, 2016 discharges, the threshold for mandatory reporting is reduced to hospitals with 300 or more births per year. Each hospital receives a quarterly risk-adjusted performance report with their hospital's caesarean section rate compared to a desired target range.[34]

The Patient Protection and Affordable Care Act

In March 2010, the Congress passed and President Barack Obama signed the Patient Protection and Affordable Care Act (PPACA).[35] Among its changes to the U.S. health insurance system are requirements for health insurers to make coverage available to all individuals and employers. Coverage available through an employer, the federal or state exchanges created under the PPACA, or off the exchange, must meet the federal essential health benefits requirements. Premium credits and other cost sharing subsidies are available to U.S. citizens and legal

[33] *Supra*, note 30, at 12.
[34] *See* Expanded threshold for reporting Perinatal Care measure set, a Joint Commission Article published on June 24, 2015, available at: http://www.jointcommission.org/issues/article.aspx?Article=A9Im9xfNbBo97ZcgWQAj/SE KRiZJsPtdFLyHUR1bZU= (last visited Jan. 6, 2016). *See also* U.S. Hospitals Held Accountable for C-Section Rates by Rebecca Dekker, PhD, RN, APRN of www.evidencebasedbirth.com, available at: http://improvingbirth.org/2013/01/u-s-hospitals-held-accountable-for-c-section-rates/ (last visited Jan. 6, 2016).
[35] P.L. 111-148. On March 30, 2010, PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010.

immigrants within certain income limits for qualified coverage purchased through a PPACA exchange.[36]

Nonpayment of Premium

Federal regulations for the PPACA also govern an enrollee's coverage bought through the exchanges and for non-grandfathered plans.[37] If an exchange enrollee received an advance premium tax credit for a qualified health plan (QHP)[38] and paid at least one full month's premium during the benefit year, and is terminated for non-payment of premium, the insurer must provide the enrollee a three-month grace period before cancellation of coverage.[39] During the grace period, the insurer must pay claims for services rendered in the first month but may pend claims for the second and third months.[40] The insurer is also required to notify providers of the possibility for denied claims when an enrollee is in the second or third months of the grace period. The insurer is also required to provide the enrollee with notice of such payment delinquency. If an insurer terminates an enrollee's coverage after the grace period, the insurer must provide written notice of termination 14 days before the effective date. If coverage is terminated, the termination date is the last day of the first month of the grace period and the insurer may not recoup any claims paid during the first month of the grace period.

The federal regulations for the grace period do not affect individuals who are not enrolled in an exchange plan or do not receive a subsidy. The grace period for these individuals remains at the length required under s. 627.608, F.S., which varies by the length of the premium payment interval. Cancellation of coverage is effective the first day of the grace period if payment is not received.

Retroactive Denial of Claims by Health Insurers

Section 627.6131, F.S., and s. 641.3155, F.S., prohibit a health insurer and a health maintenance organization (HMO), respectively, from retroactively denying a claim because of insured ineligibility more than one year after the date the claim is paid. There is, however, no redress for erroneous authorization and an insured's reliance on that authorization.

III. Effect of Proposed Changes:

ARNPs and PAs Authorized to Prescribe Controlled Substances

Sections 12 through 15 of the bill authorize physician assistants (PAs) licensed under the Medical Practice Act or the Osteopathic Medical Practice Act, and advanced registered nurse

[36] Centers for Medicare and Medicaid Services, *Health Insurance Marketplace - Will I Qualify for Lower Costs on Monthly Premiums?* https://www.healthcare.gov/will-i-qualify-to-save-on-monthly-premiums/ (last visited Jan. 23, 2016).
[37] Certain plans received "grandfather status" under PPACA. A grandfathered health plan is a plan that existed on March 23, 2010, and had at least one person continuously covered for 1 year. Some consumer protections elements do not apply to grandfathered plans.
[38] A "qualified health plan" is an insurance plan certified by the applicable Health Insurance Marketplace, provides the essential health benefits, established limits on cost sharing and meets other requirements. *See* https://www.healthcare.gov/glossary/qualified-health-plan/ for more information on qualified health plans (last visited Jan. 23, 2016).
[39] 45 CFR 156.270 and 45 CFR 430.
[40] 45 CFR 156.270.

practitioners (ARNPs) certified under part I of the Nurse Practice Act, to prescribe controlled substances under current supervisory standards for PAs and protocols for ARNPs, beginning January 1, 2017, and it creates additional statutory parameters on their controlled substance prescribing. Specifically, an ARNP's and PA's prescribing privileges, for controlled substances listed on Schedule II, are limited to a seven-day supply, do not include prescribing psychotropic medications for children under 18 years of age except by an ARNP who is also a psychiatric nurse as defined by s. 394.455, F.S.,[41] and may be limited by the controlled substance formularies that impose additional limitations on PA or ARNP prescribing privileges for specific medications.

Section 12 creates, for PAs, the ability to prescribe controlled substances by removing controlled substances from the formulary of medicinal drugs that a PA currently may not prescribe in the Medical Practice Act. The Osteopathic Medical Practice Act refers to the formulary in the Medical Practice Act, so no changes are made to that act.

Section 15 authorizes ARNPs to prescribe controlled substances by revising the authority pertaining to drug therapies. The bill authorizes an ARNP to prescribe, dispense, administer, or order any drug, which would include controlled substances. However, a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills is required to prescribe or dispense controlled substances.

Section 21 adds ARNPs and PAs to the definition of practitioner in ch. 893, F.S. This definition requires the practitioner to hold a valid federal controlled substance registry number.

Under Section 14, the bill amends s. 464.012, F.S., to require the appointment of a committee[42] to recommend an evidence-based formulary of controlled substances (controlled substances formulary) that an ARNP may not prescribe, or may prescribe under limited circumstances, as needed to protect the public interest. The committee may recommend a controlled substances formulary applicable to all ARNPs that may be limited by specialty certification, approved uses of controlled substances, or other similar restrictions deemed necessary to protect the public interest. At a minimum, the formulary must restrict the prescribing of psychiatric mental health controlled substances for children under 18 years of age to psychiatric nurses as defined in the Baker Act.[43] The formulary must also limit the prescribing of controlled substances in Schedule II to a seven-day supply, similar to the limitation imposed for PAs, except this limitation does not apply to a psychiatric medication prescribed by a psychiatric nurse under the Baker Act.

[41] Section 394.55(23), F.S., defines a "psychiatric nurse" as an advanced registered nurse practitioner certified under s. 464.012, F.S., who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician.

[42] The committee membership is: three ARNPs, including a certified registered nurse anesthetist, a certified nurse midwife, and a nurse practitioner; at least one physician recommended by the Board of Medicine and one physician recommended by the Board of Osteopathic Medicine, who have experience working with APRNs; and a pharmacist licensed under ch. 465, F.S., who is not also licensed as a physician under ch. 458, F.S., an osteopathic physician under ch. 459, F.S., or an ARNP under ch. 464, F.S. The committee members are selected by the State Surgeon General.

[43] The Baker Act is also known as the Florida Mental Health Act and the definition of a psychiatric nurse is found in s. 394.455, F.S.

The bill also provides that s. 464.012, F.S., shall be known as "The Barbara Lumpkin Prescribing Act."

The committee formed to recommend the controlled substances formulary is a replacement to a joint committee that was established in law for other purposes but which has been dormant for many years. Language establishing the joint committee and references to it are removed from law in sections 13, 23, and 24 of the bill.

The formulary committee consists of three Florida-certified ARNPs who are recommended by the Board of Nursing (BON), three physicians licensed under ch. 458 or ch. 459 who have had work experience with ARNPs and who are recommended by the Board of Medicine (BOM), and a Florida-licensed pharmacist who holds a doctor of pharmacy degree and is recommended by the Board of Pharmacy.

The BON is directed to establish the controlled substances formulary for ARNPs by January 1, 2017. The bill requires the BON to adopt recommendations for the formulary that are made by the committee and which are supported by evidence-based clinical findings presented by the BOM, the BOOM, or the Board of Dentistry. The BON is required to adopt the formulary committee's initial recommendation by October 31, 2016.

The controlled substances formulary adopted by board rule does not apply to the following acts performed within the ARNP's specialty under the established protocol approved by the medical staff of the facilities in which the service is performed, which are currently authorized under s. 464.012(4)(a)3., 4., and 9., F.S:

- Orders for pre-anesthetic medications;
- Ordering and administering regional, spinal, and general anesthesia, inhalation agents and techniques, intravenous agents and techniques, hypnosis, and other protocol procedures commonly used to render the patient insensible to pain during surgical, obstetrical, therapeutic, or diagnostic clinical procedures; or
- Managing a patient while in the post-anesthesia recovery area.

Sections 11 and 16 of the bill require a PA and ARNP to have three hours of continuing education on the safe and effective prescription of controlled substances and specifies several statutorily pre-approved providers of those continuing education hours.

Section 8 requires a PA or ARNP who prescribes controlled substances that are listed in Schedule II, Schedule III, or Schedule IV, for the treatment of chronic nonmalignant pain, to designate himself or herself as a controlled substance prescribing practitioner on his or her respective practitioner profile maintained by the Department of Health (DOH). Currently, PAs do not have practitioner profiles so the DOH will need to develop a profile for PAs to comply with this requirement.

The bill imposes the same disciplinary standards on PAs and ARNPs as those applicable to physicians for failing to meet minimal standards of acceptable and prevailing practice in prescribing and dispensing of controlled substances.

Section 7 adds ARNP disciplinary sanctions under s. 456.072, F.S., to mirror a physician's sanctions for prescribing or dispensing a controlled substance other than in the course of professional practice or failing to meet practice standards.

Section 17 adds additional acts to the Nurse Practice Act for which discipline may be taken against an ARNP relating to practicing with controlled substances, including:

- Pre-signing blank prescription forms;
- Prescribing for office use any medicinal drug appearing on Schedule II in chapter 893;
- Prescribing, ordering, dispensing, administering, supplying, selling, or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), or other hormones for the purpose of muscle building or to enhance athletic performance;[44]
- Promoting or advertising on any prescription form a community pharmacy unless the form also states: "This prescription may be filled at any pharmacy of your choice";
- Prescribing, dispensing, or administering a medicinal drug appearing on any schedule set forth in chapter 893 to himself or herself, except a drug prescribed, dispensed, or administered to the ARNP by another practitioner authorized to prescribe, dispense, or administer medicinal drugs;
- Prescribing, ordering, dispensing, administering, supplying, selling, or giving amygdalin (laetrile) to any person;[45]
- Dispensing a substance controlled in Schedule II or Schedule III, in violation of s. 465.0276, F.S.;
- Promoting or advertising through any communication medium the use, sale, or dispensing of a substance designated in s. 893.03, F.S., as a controlled substance; and
- Prescribing, ordering, dispensing, administering, supplying, selling, amphetamines, sympathomimetic amines, or a compound designated in s. 893.03(2), F.S., as a Schedule II controlled substance, to anyone except for:
    - Treating narcolepsy,[46] hyperkinesis,[47] behavioral syndrome in children characterized by the developmentally inappropriate symptoms of moderate to severe distractibility, short attention span, hyperactivity, emotional lability,[48] and impulsivity; or drug-induced brain dysfunction;
    - The diagnostic and treatment of depressions; and

[44] Bill section 17 amends s. 464.018, F.S., to add subpart (1)(p)4., which prohibits the prescribing of certain hormones for the purpose of "muscle building"; but excludes the treatment of an injured muscle from the definition of "muscle building" as used in this section; and pharmacists receiving prescriptions for the listed hormones may dispense them with the presumption that the prescription is for legitimate medical use.

[45] Laetrile is an allegedly antineoplastic drug consisting chiefly of amygdalin derived from apricot pits. It has not been proven to have any beneficial use. Farlex Partner Medical Dictionary Farlex 2012, *available at*: http://medical-dictionary.thefreedictionary.com/laetrile, (Last visited Dec. 7, 2015).

[46] *Narcolepsy* is a medical condition in which someone suddenly falls into a deep sleep while talking, working, *etc.* Miriam-Webster Dictionary, Encyclopedia Britannica Company, *available at*: http://www.merriam-webster.com/dictionary/narcolepsy, (Last visited Dec. 7, 2015).

[47] *Hyperkinesis* is defined as an abnormally increased and sometimes uncontrollable activity or muscular movements; 2. a condition especially of childhood characterized by hyperactivity. Miriam-Webster Dictionary, Encyclopedia Britannica Company, *available at*: http://www.merriam-webster.com/dictionary/hyperkinesis, (Last visited Dec. 7, 2015).

[48] *Emotional lability* is a condition of excessive emotional reactions and frequent mood changes. Mosby's Medical Dictionary, 9th edition. 2009, Elsevier, *available at*: http://medical-dictionary.thefreedictionary.com/emotional+lability , (Last visited Dec. 7, 2015).

- Clinical investigations which have been approved by the department before such investigation is begun.

Disciplinary standards that are applicable to physicians are already applicable to PAs under ss. 458.347(7)(g) and 459.022(7)(g), F.S., so no additional amendments are needed for disciplinary and enforcement action for violations of the applicable practice act relating to controlled substances.

Statutes regulating pain-management clinics under the Medical Practice Act and the Osteopathic Medical Practice Act are amended to limit the prescribing of controlled substances in a pain-management clinic to physicians licensed under ch. 458, F.S., or ch. 459, F.S. Accordingly, sections 9 and 10 of the bill prohibit PAs and ARNPs from prescribing controlled substances in pain-management clinics.

Under current law, a medical specialist who is board certified or board eligible in pain medicine by certain boards is exempted from the statutory standards of practice in s. 456.44, F.S., relating to prescribing controlled substances for the treatment of chronic nonmalignant pain. Section 8 of the bill adds two additional boards to that list: the American Board of Interventional Pain Physicians and the American Association of Physician Specialists.

Sections 1 through 4 and 22 of the bill amend various statutes to authorize or recognize that a PA or an ARNP may be a prescriber of controlled substances, as follows:

- Section 110.12315, F.S., relating to the state employees' prescription drug program, is amended to authorize ARNPs and PAs to prescribe brand name drugs which are medically necessary or are included on the formulary of drugs which may not be interchanged.
- Section 310.071, F.S., relating to deputy pilot certification; s. 310.073, F.S., relating to state pilot licensing; and s. 310.081, F.S., relating to licensed state pilots and certified deputy pilots, are amended to allow the presence of a controlled substance in a pilot's drug test results if the substance was prescribed by an ARNP or PA whose care the pilot is under, as a part of the annual physical examination required for initial certification, initial licensure, and certification and licensure retention.
- Section 948.03, F.S., relating to terms and conditions of criminal probation, is amended to include ARNPs and PAs as authorized prescribers of drugs or narcotics that a person on probation may lawfully possess.

Hospital Regulation

Section 5 of the bill deletes a provision designating certain hospitals as "provider hospitals," which have special requirements for cesarean section operations that are paid for with state or federal funds, including a peer review board that reviews the procedures performed and establishes practice parameters for such operations.

Section 6 requires a hospital to notify each obstetrical physician with privileges at the facility at least 90 days before it closes its obstetrical department or ceases to provide obstetrical services.

Prior Authorization Forms

Section 18 of the bill creates s. 627.42392, F.S., to require insurers, Medicaid managed care plans, HMOs, or their pharmacy benefits managers, that do not use electronic prior authorization forms for their contract providers, to only use prior authorization forms approved by the Financial Services Commission, in consultation with the Agency for Health Care Administration (AHCA), to obtain prior authorization for medical procedures, courses of treatment, and prescription drugs, beginning January 1, 2017. The Commission, in consultation with the AHCA, must adopt by rule guidelines for these forms to ensure general uniformity of the forms, and the forms may not exceed two pages, excluding instructions.

Retroactive Denial of Claims

Sections 19 and 20 of the bill amend ss. 627.6131 and 641.3155, F.S., respectively, to preclude a health insurer or an HMO from retroactively denying a claim because of an insured's ineligibility if the health insurer or HMO has previously verified eligibility at the time of treatment and provided an authorization number.

Technical Revisions and Effective Date

Sections 25 through 33 reenact multiple statutes for the purpose of incorporating the amendments made by the bill to ss. 456.072, 456.44, 458.347, 464.003, 464.012, 464.013, 464.018, 893.02, and 948.03, F.S., in references thereto.

Additional conforming and grammatical changes are made in the bill.

Most of the bill becomes effective upon becoming law. However, the authority for a PA or an ARNP to prescribe controlled substances in accordance with the bill becomes effective January 1, 2017.

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:

Under CS/CS/CS/SB 676, physician assistants (PAs) and advanced registered nurse practitioners (ARNPs) who are authorized by the supervising physician or under a protocol to prescribe controlled substances may be able to care for more patients due to reduced coordination with the supervising physician each time a controlled substance is recommended for a patient. Patients may see reduced health care costs and efficiencies in health care delivery as a result of having their health care needs more fully addressed by the PA or ARNP without specific involvement of a physician prescribing a needed controlled substance for treatment.

Eliminating the ability of a health insurer or HMO to subsequently deny a claim once authorized will prevent unanticipated additional financial obligations being placed on persons who are authorized for coverage while not actually having coverage for the services rendered. This will simultaneously impose additional financial liability on a health insurer or HMO that provides authorization for an individual who is later confirmed to not be covered for the services rendered.

C. Government Sector Impact:

The Department of Health (DOH) may incur costs for rulemaking, modifications to develop a profile for PAs, and workload impacts related to additional complaints and investigations. The DOH advises that its current resources are adequate to absorb these additional costs.[49]

VI. Technical Deficiencies:

Section 18 of the bill, which amends s. 627.42392, F.S., a provision in the Insurance Code, requires a health insurer, or a pharmacy benefit manager (PBM) acting on behalf of the health insurer, which does not use an electronic prior authorization form for its network providers, to use the prior authorization form that the Financial Services Commission, in consultation with the Agency for Health Care Administration (AHCA), adopts by rule. Further, the Commission, in consultation with the AHCA, is required to adopt by rule guidelines for all prior authorization forms. However, the Office of Insurance Regulation (OIR) does not regulate PBMs. Insurers, HMOs, and other risk-bearing entities that are regulated by the OIR, who contract with a PBM or other third party, are subject to this statutory provision and would be subject to enforcement by the OIR for noncompliance, but not so for a PBM itself.

VII. Related Issues:

None.

[49] The Department of Health, *2016 Agency Legislative Bill Analysis, SB 676,* on file with the Appropriations Subcommittee on Health and Human Services.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 110.12315, 310.071, 310.073, 310.081, 395.1051, 456.072, 456.44, 458.3265, 459.0137, 458.347, 464.003, 464.012, 464.013, 464.018, 627.6131, 641.3155, 893.02, 948.03, 458.348, 459.025, 458.331, 459.015, 459.022, 465.0158, 466.02751, 458.303, 458.3475, 459.023, 456.041, 464.012, 464.0205, 320.0848, 464.008, 464.009, 775.051, 893.02, 944.17, 948.001, 948.03, and 948.101.

This bill creates section 627.42392 of the Florida Statutes.

This bill repeals section 383.336 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations on February 18, 2016:
The CS/CS/CS provides that s. 464.012, F.S., shall be known as "The Barbara Lumpkin Prescribing Act."

CS/CS by Banking and Insurance on January 26, 2016:
The CS/CS provides that the Financial Services Commission in consultation with the Agency for Health Care Administration (AHCA) will adopt by rule a prior authorization form and guidelines. The CS also corrects a cross reference.

CS by Health Policy on January 11, 2016:
The CS amends SB 676 to add the American Association of Nurse Anesthetists to the list of statutorily pre-approved providers for continuing education for ARNPs.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
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The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Between lines 800 and 801
insert:
(7) This section shall be known as "The Barbara Lumpkin Prescribing Act."

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 52

243646

and insert:

date; providing a short title; authorizing an advanced registered nurse

By the Committees on Banking and Insurance; and Health Policy; and Senator Grimsley

597-02610-16 2016676c2

A bill to be entitled

An act relating to access to health care services; amending s. 110.12315, F.S.; expanding the categories of persons who may prescribe brand name drugs under the prescription drug program when medically necessary; amending ss. 310.071, 310.073, and 310.081, F.S.; exempting controlled substances prescribed by an advanced registered nurse practitioner or a physician assistant from the disqualifications for certification or licensure, and for continued certification or licensure, as a deputy pilot or state pilot; repealing s. 383.336, F.S., relating to provider hospitals, practice parameters, and peer review boards; amending s. 395.1051, F.S.; requiring a hospital to provide specified advance notice to certain obstetrical physicians before it closes its obstetrical department or ceases to provide obstetrical services; amending s. 456.072, F.S.; applying existing penalties for violations relating to the prescribing or dispensing of controlled substances by an advanced registered nurse practitioner; amending s. 456.44, F.S.; defining the term "registrant"; deleting an obsolete date; requiring advanced registered nurse practitioners and physician assistants who prescribe controlled substances for the treatment of certain pain to make a certain designation, comply with registration requirements, and follow specified standards of practice; providing applicability; amending ss. 458.3265 and 459.0137, F.S.; limiting the authority to prescribe a controlled substance in a pain-management clinic only to a physician licensed under ch. 458 or

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ch. 459, F.S.; amending s. 458.347, F.S.; revising the required continuing education requirements for a physician assistant; requiring that a specified formulary limit the prescription of certain controlled substances by physician assistants as of a specified date; amending s. 464.003, F.S.; revising the term "advanced or specialized nursing practice"; deleting the joint committee established in the definition; amending s. 464.012, F.S.; requiring the Board of Nursing to establish a committee to recommend a formulary of controlled substances that may not be prescribed, or may be prescribed only on a limited basis, by an advanced registered nurse practitioner; specifying the membership of the committee; providing parameters for the formulary; requiring that the formulary be adopted by board rule; specifying the process for amending the formulary and imposing a burden of proof; limiting the formulary's application in certain instances; requiring the board to adopt the committee's initial recommendations by a specified date; authorizing an advanced registered nurse practitioner to prescribe, dispense, administer, or order drugs, including certain controlled substances under certain circumstances, as of a specified date; amending s. 464.013, F.S.; revising continuing education requirements for renewal of a license or certificate; amending s. 464.018, F.S.; specifying acts that constitute grounds for denial of a license or for disciplinary action against an advanced

registered nurse practitioner; creating s. 627.42392, F.S.; defining the term "health insurer"; requiring that certain health insurers that do not already use a certain form use only a prior authorization form approved by the Financial Services Commission in consultation with the Agency for Health Care Administration; requiring the commission in consultation with the agency to adopt by rule guidelines for such forms; amending s. 627.6131, F.S.; prohibiting a health insurer from retroactively denying a claim under specified circumstances; amending s. 641.3155, F.S.; prohibiting a health maintenance organization from retroactively denying a claim under specified circumstances; amending s. 893.02, F.S.; revising the term "practitioner" to include advanced registered nurse practitioners and physician assistants under the Florida Comprehensive Drug Abuse Prevention and Control Act if a certain requirement is met; amending s. 948.03, F.S.; providing that possession of drugs or narcotics prescribed by an advanced registered nurse practitioner or a physician assistant does not violate a prohibition relating to the possession of drugs or narcotics during probation; amending ss. 458.348 and 459.025, F.S.; conforming provisions to changes made by the act; reenacting ss. 458.331(10), 458.347(7)(g), 459.015(10), 459.022(7)(f), and 465.0158(5)(b), F.S., to incorporate the amendment made to s. 456.072, F.S., in references thereto; reenacting ss. 456.072(1)(mm)

and 466.02751, F.S., to incorporate the amendment made to s. 456.44, F.S., in references thereto; reenacting ss. 458.303, 458.3475(7)(b), 459.022(4)(e) and (9)(c), and 459.023(7)(b), F.S., to incorporate the amendment made to s. 458.347, F.S., in references thereto; reenacting s. 464.012(3)(c), F.S., to incorporate the amendment made to s. 464.003, F.S., in a reference thereto; reenacting ss. 456.041(1)(a), 458.348(1) and (2), and 459.025(1), F.S., to incorporate the amendment made to s. 464.012, F.S., in references thereto; reenacting s. 464.0205(7), F.S., to incorporate the amendment made to s. 464.013, F.S., in a reference thereto; reenacting ss. 320.0848(11), 464.008(2), 464.009(5), and 464.0205(1)(b), (3), and (4)(b), F.S., to incorporate the amendment made to s. 464.018, F.S., in references thereto; reenacting s. 775.051, F.S., to incorporate the amendment made to s. 893.02, F.S., in a reference thereto; reenacting ss. 944.17(3)(a), 948.001(8), and 948.101(1)(e), F.S., to incorporate the amendment made to s. 948.03, F.S., in references thereto; providing effective dates.

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

Section 1. Subsection (7) of section 110.12315, Florida Statutes, is amended to read:

110.12315 Prescription drug program.—The state employees' prescription drug program is established. This program shall be administered by the Department of Management Services, according

to the terms and conditions of the plan as established by the relevant provisions of the annual General Appropriations Act and implementing legislation, subject to the following conditions:

(7) The department shall establish the reimbursement schedule for prescription pharmaceuticals dispensed under the program. Reimbursement rates for a prescription pharmaceutical must be based on the cost of the generic equivalent drug if a generic equivalent exists, unless the physician, advanced registered nurse practitioner, or physician assistant prescribing the pharmaceutical clearly states on the prescription that the brand name drug is medically necessary or that the drug product is included on the formulary of drug products that may not be interchanged as provided in chapter 465, in which case reimbursement must be based on the cost of the brand name drug as specified in the reimbursement schedule adopted by the department.

Section 2. Paragraph (c) of subsection (1) of section 310.071, Florida Statutes, is amended, and subsection (3) of that section is republished, to read:

310.071 Deputy pilot certification.—

(1) In addition to meeting other requirements specified in this chapter, each applicant for certification as a deputy pilot must:

(c) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental

capabilities necessary to carry out the professional duties of a certificated deputy pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician, an advanced registered nurse practitioner, or a physician assistant and that controlled substance was prescribed by that physician, advanced registered nurse practitioner, or physician assistant. To maintain eligibility as a certificated deputy pilot, each certificated deputy pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the certificateholder satisfactorily meets the standards. The standards for certificateholders shall include a drug test.

(3) The initial certificate issued to a deputy pilot shall be valid for a period of 12 months, and at the end of this period, the certificate shall automatically expire and shall not be renewed. During this period, the board shall thoroughly evaluate the deputy pilot's performance for suitability to continue training and shall make appropriate recommendations to the department. Upon receipt of a favorable recommendation by the board, the department shall issue a certificate to the deputy pilot, which shall be valid for a period of 2 years. The certificate may be renewed only two times, except in the case of a fully licensed pilot who is cross-licensed as a deputy pilot in another port, and provided the deputy pilot meets the requirements specified for pilots in paragraph (1)(c).

Section 3. Subsection (3) of section 310.073, Florida Statutes, is amended to read:

310.073 State pilot licensing.—In addition to meeting other requirements specified in this chapter, each applicant for license as a state pilot must:

(3) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a licensed state pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician, an advanced registered nurse practitioner, or a physician assistant and that controlled substance was prescribed by that physician, advanced registered nurse practitioner, or physician assistant. To maintain eligibility as a licensed state pilot, each licensed state pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the licensee satisfactorily meets the standards. The standards for licensees shall include a drug test.

Section 4. Paragraph (b) of subsection (3) of section 310.081, Florida Statutes, is amended to read:

310.081 Department to examine and license state pilots and certificate deputy pilots; vacancies.—

(3) Pilots shall hold their licenses or certificates pursuant to the requirements of this chapter so long as they:

(b) Are in good physical and mental health as evidenced by documentary proof of having satisfactorily passed a physical examination administered by a licensed physician or physician assistant within each calendar year. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a licensed state pilot or a certificated deputy pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician, an advanced registered nurse practitioner, or a physician assistant and that controlled substance was prescribed by that physician, advanced registered nurse practitioner, or physician assistant. To maintain eligibility as a certificated deputy pilot or licensed state pilot, each certificated deputy pilot or licensed state pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the certificateholder or licensee satisfactorily meets the standards. The standards for certificateholders and for licensees shall include a drug test.

Upon resignation or in the case of disability permanently affecting a pilot's ability to serve, the state license or certificate issued under this chapter shall be revoked by the department.

Section 5. Section 383.336, Florida Statutes, is repealed.

Section 6. Section 395.1051, Florida Statutes, is amended

to read:

395.1051 Duty to notify patients and physicians.—

(1) An appropriately trained person designated by each licensed facility shall inform each patient, or an individual identified pursuant to s. 765.401(1), in person about adverse incidents that result in serious harm to the patient. Notification of outcomes of care which ~~that~~ result in harm to the patient under this section does ~~shall~~ not constitute an acknowledgment or admission of liability and may not~~, nor can it~~ be introduced as evidence.

(2) A hospital shall notify each obstetrical physician who has privileges at the hospital at least 90 days before the hospital closes its obstetrical department or ceases to provide obstetrical services.

Section 7. Subsection (7) of section 456.072, Florida Statutes, is amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

(7) Notwithstanding subsection (2), upon a finding that a physician has prescribed or dispensed a controlled substance, or caused a controlled substance to be prescribed or dispensed, in a manner that violates the standard of practice set forth in s. 458.331(1)(q) or (t), s. 459.015(1)(t) or (x), s. 461.013(1)(o) or (s), or s. 466.028(1)(p) or (x), or that an advanced registered nurse practitioner has prescribed or dispensed a controlled substance, or caused a controlled substance to be prescribed or dispensed, in a manner that violates the standard of practice set forth in s. 464.018(1)(n) or (p)6., the physician or advanced registered nurse practitioner shall be suspended for a period of not less than 6 months and pay a fine

of not less than $10,000 per count. Repeated violations shall result in increased penalties.

Section 8. Section 456.44, Florida Statutes, is amended to read:

456.44 Controlled substance prescribing.—

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

(a) "Addiction medicine specialist" means a board-certified psychiatrist with a subspecialty certification in addiction medicine or who is eligible for such subspecialty certification in addiction medicine, an addiction medicine physician certified or eligible for certification by the American Society of Addiction Medicine, or an osteopathic physician who holds a certificate of added qualification in Addiction Medicine through the American Osteopathic Association.

(b) "Adverse incident" means any incident set forth in s. 458.351(4)(a)-(e) or s. 459.026(4)(a)-(e).

(c) "Board-certified pain management physician" means a physician who possesses board certification in pain medicine by the American Board of Pain Medicine, board certification by the American Board of Interventional Pain Physicians, or board certification or subcertification in pain management or pain medicine by a specialty board recognized by the American Association of Physician Specialists or the American Board of Medical Specialties or an osteopathic physician who holds a certificate in Pain Management by the American Osteopathic Association.

(d) "Board eligible" means successful completion of an anesthesia, physical medicine and rehabilitation, rheumatology, or neurology residency program approved by the Accreditation

Council for Graduate Medical Education or the American Osteopathic Association for a period of 6 years from successful completion of such residency program.

(e) "Chronic nonmalignant pain" means pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

(f) "Mental health addiction facility" means a facility licensed under chapter 394 or chapter 397.

(g) "Registrant" means a physician, a physician assistant, or an advanced registered nurse practitioner who meets the requirements of subsection (2).

(2) REGISTRATION. ~~Effective January 1, 2012,~~ A physician licensed under chapter 458, chapter 459, chapter 461, or chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced registered nurse practitioner certified under part I of chapter 464 who prescribes any controlled substance, listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, for the treatment of chronic nonmalignant pain, must:

(a) Designate himself or herself as a controlled substance prescribing practitioner on his or her ~~the physician's~~ practitioner profile.

(b) Comply with the requirements of this section and applicable board rules.

(3) STANDARDS OF PRACTICE.—The standards of practice in this section do not supersede the level of care, skill, and treatment recognized in general law related to health care licensure.

(a) A complete medical history and a physical examination must be conducted before beginning any treatment and must be documented in the medical record. The exact components of the physical examination shall be left to the judgment of the registrant ~~clinician~~ who is expected to perform a physical examination proportionate to the diagnosis that justifies a treatment. The medical record must, at a minimum, document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, a review of previous medical records, previous diagnostic studies, and history of alcohol and substance abuse. The medical record shall also document the presence of one or more recognized medical indications for the use of a controlled substance. Each registrant must develop a written plan for assessing each patient's risk of aberrant drug-related behavior, which may include patient drug testing. Registrants must assess each patient's risk for aberrant drug-related behavior and monitor that risk on an ongoing basis in accordance with the plan.

(b) Each registrant must develop a written individualized treatment plan for each patient. The treatment plan shall state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and shall indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the registrant ~~physician~~ shall adjust drug therapy to the individual medical needs of each patient. Other treatment modalities, including a rehabilitation program, shall be considered depending on the etiology of the pain and the extent

to which the pain is associated with physical and psychosocial impairment. The interdisciplinary nature of the treatment plan shall be documented.

(c) The registrant ~~physician~~ shall discuss the risks and benefits of the use of controlled substances, including the risks of abuse and addiction, as well as physical dependence and its consequences, with the patient, persons designated by the patient, or the patient's surrogate or guardian if the patient is incompetent. The registrant ~~physician~~ shall use a written controlled substance agreement between the registrant ~~physician~~ and the patient outlining the patient's responsibilities, including, but not limited to:

1. Number and frequency of controlled substance prescriptions and refills.

2. Patient compliance and reasons for which drug therapy may be discontinued, such as a violation of the agreement.

3. An agreement that controlled substances for the treatment of chronic nonmalignant pain shall be prescribed by a single treating registrant ~~physician~~ unless otherwise authorized by the treating registrant ~~physician~~ and documented in the medical record.

(d) The patient shall be seen by the registrant ~~physician~~ at regular intervals, not to exceed 3 months, to assess the efficacy of treatment, ensure that controlled substance therapy remains indicated, evaluate the patient's progress toward treatment objectives, consider adverse drug effects, and review the etiology of the pain. Continuation or modification of therapy shall depend on the registrant's ~~physician's~~ evaluation of the patient's progress. If treatment goals are not being

achieved, despite medication adjustments, the registrant ~~physician~~ shall reevaluate the appropriateness of continued treatment. The registrant ~~physician~~ shall monitor patient compliance in medication usage, related treatment plans, controlled substance agreements, and indications of substance abuse or diversion at a minimum of 3-month intervals.

(e) The registrant ~~physician~~ shall refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention shall be given to those patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation and requires consultation with or referral to an addiction medicine specialist or a psychiatrist.

(f) A registrant ~~physician registered under this section~~ must maintain accurate, current, and complete records that are accessible and readily available for review and comply with the requirements of this section, the applicable practice act, and applicable board rules. The medical records must include, but are not limited to:

1. The complete medical history and a physical examination, including history of drug abuse or dependence.

2. Diagnostic, therapeutic, and laboratory results.

3. Evaluations and consultations.

4. Treatment objectives.

5. Discussion of risks and benefits.

6. Treatments.

7. Medications, including date, type, dosage, and quantity prescribed.

8. Instructions and agreements.

9. Periodic reviews.

10. Results of any drug testing.

11. A photocopy of the patient's government-issued photo identification.

12. If a written prescription for a controlled substance is given to the patient, a duplicate of the prescription.

13. The registrant's ~~physician's~~ full name presented in a legible manner.

(g) A registrant shall immediately refer patients with signs or symptoms of substance abuse ~~shall be immediately referred~~ to a board-certified pain management physician, an addiction medicine specialist, or a mental health addiction facility as it pertains to drug abuse or addiction unless the registrant is a physician who is board-certified or board-eligible in pain management. Throughout the period of time before receiving the consultant's report, a prescribing registrant ~~physician~~ shall clearly and completely document medical justification for continued treatment with controlled substances and those steps taken to ensure medically appropriate use of controlled substances by the patient. Upon receipt of the consultant's written report, the prescribing registrant ~~physician~~ shall incorporate the consultant's recommendations for continuing, modifying, or discontinuing controlled substance therapy. The resulting changes in treatment shall be specifically documented in the patient's medical record. Evidence or behavioral indications of diversion shall be

followed by discontinuation of controlled substance therapy, and the patient shall be discharged, and all results of testing and actions taken by the registrant ~~physician~~ shall be documented in the patient's medical record.

This subsection does not apply to a board-eligible or board-certified anesthesiologist, physiatrist, rheumatologist, or neurologist, or to a board-certified physician who has surgical privileges at a hospital or ambulatory surgery center and primarily provides surgical services. This subsection does not apply to a board-eligible or board-certified medical specialist who has also completed a fellowship in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or who is board eligible or board certified in pain medicine by the American Board of Pain Medicine, the American Board of Interventional Pain Physicians, the American Association of Physician Specialists, or a board approved by the American Board of Medical Specialties or the American Osteopathic Association and performs interventional pain procedures of the type routinely billed using surgical codes. This subsection does not apply to a registrant ~~physician~~ who prescribes medically necessary controlled substances for a patient during an inpatient stay in a hospital licensed under chapter 395.

Section 9. Paragraph (b) of subsection (2) of section 458.3265, Florida Statutes, is amended to read:

458.3265 Pain-management clinics.—

(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities apply to any physician who provides professional services in a

pain-management clinic that is required to be registered in subsection (1).

(b) Only ~~a person may not dispense any medication on the premises of a registered pain-management clinic unless he or she is~~ a physician licensed under this chapter or chapter 459 may dispense medication or prescribe a controlled substance regulated under chapter 893 on the premises of a registered pain-management clinic.

Section 10. Paragraph (b) of subsection (2) of section 459.0137, Florida Statutes, is amended to read:

459.0137 Pain-management clinics.—

(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities apply to any osteopathic physician who provides professional services in a pain-management clinic that is required to be registered in subsection (1).

(b) Only ~~a person may not dispense any medication on the premises of a registered pain-management clinic unless he or she is~~ a physician licensed under this chapter or chapter 458 may dispense medication or prescribe a controlled substance regulated under chapter 893 on the premises of a registered pain-management clinic.

Section 11. Paragraph (e) of subsection (4) of section 458.347, Florida Statutes, is amended, and paragraph (c) of subsection (9) of that section is republished, to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervisory physician's

practice unless such medication is listed on the formulary created pursuant to paragraph (f). A fully licensed physician assistant may only prescribe or dispense such medication under the following circumstances:

1. A physician assistant must clearly identify to the patient that he or she is a physician assistant. Furthermore, the physician assistant must inform the patient that the patient has the right to see the physician prior to any prescription being prescribed or dispensed by the physician assistant.

2. The supervisory physician must notify the department of his or her intent to delegate, on a department-approved form, before delegating such authority and notify the department of any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only by a supervising physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must file with the department a signed affidavit that he or she has completed a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal application. Three of the 10 hours must consist of a continuing education course on the safe and effective prescribing of controlled substance medications which is offered by a statewide professional association of physicians in this state accredited to provide educational activities designated for the American Medical Association Physician's Recognition Award Category 1 credit or designated by the American Academy of Physician Assistants as a Category 1 credit.

4. The department may issue a prescriber number to the

physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the foregoing requirements. The physician assistant shall not be required to independently register pursuant to s. 465.0276.

5. The prescription must be written in a form that complies with chapter 499 and must contain, in addition to the supervisory physician's name, address, and telephone number, the physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465 and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The appearance of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

6. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

(9) COUNCIL ON PHYSICIAN ASSISTANTS.—The Council on Physician Assistants is created within the department.

(c) The council shall:

1. Recommend to the department the licensure of physician assistants.

2. Develop all rules regulating the use of physician assistants by physicians under this chapter and chapter 459, except for rules relating to the formulary developed under paragraph (4)(f). The council shall also develop rules to ensure that the continuity of supervision is maintained in each practice setting. The boards shall consider adopting a proposed rule developed by the council at the regularly scheduled meeting

immediately following the submission of the proposed rule by the council. A proposed rule submitted by the council may not be adopted by either board unless both boards have accepted and approved the identical language contained in the proposed rule. The language of all proposed rules submitted by the council must be approved by both boards pursuant to each respective board's guidelines and standards regarding the adoption of proposed rules. If either board rejects the council's proposed rule, that board must specify its objection to the council with particularity and include any recommendations it may have for the modification of the proposed rule.

3. Make recommendations to the boards regarding all matters relating to physician assistants.

4. Address concerns and problems of practicing physician assistants in order to improve safety in the clinical practices of licensed physician assistants.

Section 12. Effective January 1, 2017, paragraph (f) of subsection (4) of section 458.347, Florida Statutes, is amended to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(f)1. The council shall establish a formulary of medicinal drugs that a fully licensed physician assistant having prescribing authority under this section or s. 459.022 may not prescribe. The formulary must include ~~controlled substances as defined in chapter 893,~~ general anesthetics~~,~~ and radiographic contrast materials, and must limit the prescription of Schedule II controlled substances as listed in s. 893.03 to a 7-day supply. The formulary must also restrict the prescribing of

psychiatric mental health controlled substances for children younger than 18 years of age.

2. In establishing the formulary, the council shall consult with a pharmacist licensed under chapter 465, but not licensed under this chapter or chapter 459, who shall be selected by the State Surgeon General.

3. Only the council shall add to, delete from, or modify the formulary. Any person who requests an addition, a deletion, or a modification of a medicinal drug listed on such formulary has the burden of proof to show cause why such addition, deletion, or modification should be made.

4. The boards shall adopt the formulary required by this paragraph, and each addition, deletion, or modification to the formulary, by rule. Notwithstanding any provision of chapter 120 to the contrary, the formulary rule shall be effective 60 days after the date it is filed with the Secretary of State. Upon adoption of the formulary, the department shall mail a copy of such formulary to each fully licensed physician assistant having prescribing authority under this section or s. 459.022, and to each pharmacy licensed by the state. The boards shall establish, by rule, a fee not to exceed $200 to fund the provisions of this paragraph and paragraph (e).

Section 13. Subsection (2) of section 464.003, Florida Statutes, is amended to read:

464.003 Definitions.—As used in this part, the term:

(2) "Advanced or specialized nursing practice" means, in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the board which, by virtue of postbasic specialized education, training,

and experience, are appropriately performed by an advanced registered nurse practitioner. Within the context of advanced or specialized nursing practice, the advanced registered nurse practitioner may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The advanced registered nurse practitioner may also perform acts of medical diagnosis and treatment, prescription, and operation as authorized within the framework of an established supervisory protocol ~~which are identified and approved by a joint committee composed of three members appointed by the Board of Nursing, two of whom must be advanced registered nurse practitioners; three members appointed by the Board of Medicine, two of whom must have had work experience with advanced registered nurse practitioners; and the State Surgeon General or the State Surgeon General's designee~~. ~~Each committee member appointed by a board shall be appointed to a term of 4 years unless a shorter term is required to establish or maintain staggered terms. The Board of Nursing shall adopt rules authorizing the performance of any such acts approved by the joint committee. Unless otherwise specified by the joint committee, such acts must be performed under the general supervision of a practitioner licensed under chapter 458, chapter 459, or chapter 466 within the framework of standing protocols which identify the medical acts to be performed and the conditions for their performance.~~ The department may, by rule, require that a copy of the protocol be filed with the department along with the notice required by s. 458.348.

Section 14. Section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees; controlled substance prescribing.—

(1) Any nurse desiring to be certified as an advanced registered nurse practitioner shall apply to the department and submit proof that he or she holds a current license to practice professional nursing and that he or she meets one or more of the following requirements as determined by the board:

(a) Satisfactory completion of a formal postbasic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice.

(b) Certification by an appropriate specialty board. Such certification shall be required for initial state certification and any recertification as a registered nurse anesthetist or nurse midwife. The board may by rule provide for provisional state certification of graduate nurse anesthetists and nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(c) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program shall be required for initial certification as a nurse practitioner under paragraph (4)(c). For applicants graduating on or after October 1, 2001, graduation from a master's degree program shall be required for initial certification as a registered nurse anesthetist under paragraph (4)(a).

(2) The board shall provide by rule the appropriate

requirements for advanced registered nurse practitioners in the categories of certified registered nurse anesthetist, certified nurse midwife, and nurse practitioner.

(3) An advanced registered nurse practitioner shall perform those functions authorized in this section within the framework of an established protocol that is filed with the board upon biennial license renewal and within 30 days after entering into a supervisory relationship with a physician or changes to the protocol. The board shall review the protocol to ensure compliance with applicable regulatory standards for protocols. The board shall refer to the department licensees submitting protocols that are not compliant with the regulatory standards for protocols. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the established framework, an advanced registered nurse practitioner may:

(a) Monitor and alter drug therapies.

(b) Initiate appropriate therapies for certain conditions.

(c) Perform additional functions as may be determined by rule in accordance with s. 464.003(2).

(d) Order diagnostic tests and physical and occupational therapy.

(4) In addition to the general functions specified in subsection (3), an advanced registered nurse practitioner may perform the following acts within his or her specialty:

(a) The certified registered nurse anesthetist may, to the extent authorized by established protocol approved by the medical staff of the facility in which the anesthetic service is

performed, perform any or all of the following:

1. Determine the health status of the patient as it relates to the risk factors and to the anesthetic management of the patient through the performance of the general functions.

2. Based on history, physical assessment, and supplemental laboratory results, determine, with the consent of the responsible physician, the appropriate type of anesthesia within the framework of the protocol.

3. Order under the protocol preanesthetic medication.

4. Perform under the protocol procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, therapeutic, or diagnostic clinical procedures. These procedures include ordering and administering regional, spinal, and general anesthesia; inhalation agents and techniques; intravenous agents and techniques; and techniques of hypnosis.

5. Order or perform monitoring procedures indicated as pertinent to the anesthetic health care management of the patient.

6. Support life functions during anesthesia health care, including induction and intubation procedures, the use of appropriate mechanical supportive devices, and the management of fluid, electrolyte, and blood component balances.

7. Recognize and take appropriate corrective action for abnormal patient responses to anesthesia, adjunctive medication, or other forms of therapy.

8. Recognize and treat a cardiac arrhythmia while the patient is under anesthetic care.

9. Participate in management of the patient while in the

postanesthesia recovery area, including ordering the administration of fluids and drugs.

10. Place special peripheral and central venous and arterial lines for blood sampling and monitoring as appropriate.

(b) The certified nurse midwife may, to the extent authorized by an established protocol which has been approved by the medical staff of the health care facility in which the midwifery services are performed, or approved by the nurse midwife's physician backup when the delivery is performed in a patient's home, perform any or all of the following:

1. Perform superficial minor surgical procedures.

2. Manage the patient during labor and delivery to include amniotomy, episiotomy, and repair.

3. Order, initiate, and perform appropriate anesthetic procedures.

4. Perform postpartum examination.

5. Order appropriate medications.

6. Provide family-planning services and well-woman care.

7. Manage the medical care of the normal obstetrical patient and the initial care of a newborn patient.

(c) The nurse practitioner may perform any or all of the following acts within the framework of established protocol:

1. Manage selected medical problems.

2. Order physical and occupational therapy.

3. Initiate, monitor, or alter therapies for certain uncomplicated acute illnesses.

4. Monitor and manage patients with stable chronic diseases.

5. Establish behavioral problems and diagnosis and make

treatment recommendations.

(5) The board shall certify, and the department shall issue a certificate to, any nurse meeting the qualifications in this section. The board shall establish an application fee not to exceed $100 and a biennial renewal fee not to exceed $50. The board is authorized to adopt such other rules as are necessary to implement the provisions of this section.

(6)(a) The board shall establish a committee to recommend a formulary of controlled substances that an advanced registered nurse practitioner may not prescribe or may prescribe only for specific uses or in limited quantities. The committee must consist of three advanced registered nurse practitioners licensed under this section, recommended by the board; three physicians licensed under chapter 458 or chapter 459 who have work experience with advanced registered nurse practitioners, recommended by the Board of Medicine; and a pharmacist licensed under chapter 465 who is a doctor of pharmacy, recommended by the Board of Pharmacy. The committee may recommend an evidence-based formulary applicable to all advanced registered nurse practitioners which is limited by specialty certification, is limited to approved uses of controlled substances, or is subject to other similar restrictions the committee finds are necessary to protect the health, safety, and welfare of the public. The formulary must restrict the prescribing of psychiatric mental health controlled substances for children younger than 18 years of age to advanced registered nurse practitioners who also are psychiatric nurses as defined in s. 394.455. The formulary must also limit the prescribing of Schedule II controlled substances as listed in s. 893.03 to a 7-day supply, except that such

restriction does not apply to controlled substances that are psychiatric medications prescribed by psychiatric nurses as defined in s. 394.455.

(b) The board shall adopt by rule the recommended formulary and any revision to the formulary which it finds is supported by evidence-based clinical findings presented by the Board of Medicine, the Board of Osteopathic Medicine, or the Board of Dentistry.

(c) The formulary required under this subsection does not apply to a controlled substance that is dispensed for administration pursuant to an order, including an order for medication authorized by subparagraph (4)(a)3., subparagraph (4)(a)4., or subparagraph (4)(a)9.

(d) The board shall adopt the committee's initial recommendation no later than October 31, 2016.

Section 15. Effective January 1, 2017, subsection (3) of section 464.012, Florida Statutes, as amended by this act, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees; controlled substance prescribing.—

(3) An advanced registered nurse practitioner shall perform those functions authorized in this section within the framework of an established protocol that is filed with the board upon biennial license renewal and within 30 days after entering into a supervisory relationship with a physician or changes to the protocol. The board shall review the protocol to ensure compliance with applicable regulatory standards for protocols. The board shall refer to the department licensees submitting protocols that are not compliant with the regulatory standards

for protocols. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the established framework, an advanced registered nurse practitioner may:

(a) Prescribe, dispense, administer, or order any drug; however, an advanced registered nurse practitioner may prescribe or dispense a controlled substance as defined in s. 893.03 only if the advanced registered nurse practitioner has graduated from a program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills ~~Monitor and alter drug therapies~~.

(b) Initiate appropriate therapies for certain conditions.

(c) Perform additional functions as may be determined by rule in accordance with s. 464.003(2).

(d) Order diagnostic tests and physical and occupational therapy.

Section 16. Subsection (3) of section 464.013, Florida Statutes, is amended to read:

464.013 Renewal of license or certificate.—

(3) The board shall by rule prescribe up to 30 hours of continuing education biennially as a condition for renewal of a license or certificate.

(a) A nurse who is certified by a health care specialty program accredited by the National Commission for Certifying Agencies or the Accreditation Board for Specialty Nursing Certification is exempt from continuing education requirements. The criteria for programs must ~~shall~~ be approved by the board.

(b) Notwithstanding the exemption in paragraph (a), as part

of the maximum 30 hours of continuing education hours required under this subsection, advanced registered nurse practitioners certified under s. 464.012 must complete at least 3 hours of continuing education on the safe and effective prescription of controlled substances. Such continuing education courses must be offered by a statewide professional association of physicians in this state accredited to provide educational activities designated for the American Medical Association Physician's Recognition Award Category 1 credit, the American Nurses Credentialing Center, the American Association of Nurse Anesthetists, or the American Association of Nurse Practitioners and may be offered in a distance learning format.

Section 17. Paragraph (p) is added to subsection (1) of section 464.018, Florida Statutes, and subsection (2) of that section is republished, to read:

464.018 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(p) For an advanced registered nurse practitioner:

1. Presigning blank prescription forms.

2. Prescribing for office use any medicinal drug appearing on Schedule II in chapter 893.

3. Prescribing, ordering, dispensing, administering, supplying, selling, or giving a drug that is an amphetamine, a sympathomimetic amine drug, or a compound designated in s. 893.03(2) as a Schedule II controlled substance, to or for any person except for:

a. The treatment of narcolepsy; hyperkinesis; behavioral syndrome in children characterized by the developmentally

inappropriate symptoms of moderate to severe distractibility, short attention span, hyperactivity, emotional lability, and impulsivity; or drug-induced brain dysfunction.

b. The differential diagnostic psychiatric evaluation of depression or the treatment of depression shown to be refractory to other therapeutic modalities.

c. The clinical investigation of the effects of such drugs or compounds when an investigative protocol is submitted to, reviewed by, and approved by the department before such investigation is begun.

4. Prescribing, ordering, dispensing, administering, supplying, selling, or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), or other hormones for the purpose of muscle building or to enhance athletic performance. As used in this subparagraph, the term "muscle building" does not include the treatment of injured muscle. A prescription written for the drug products identified in this subparagraph may be dispensed by a pharmacist with the presumption that the prescription is for legitimate medical use.

5. Promoting or advertising on any prescription form a community pharmacy unless the form also states: "This prescription may be filled at any pharmacy of your choice."

6. Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including a controlled substance, other than in the course of his or her professional practice. For the purposes of this subparagraph, it is legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate

quantities is not in the best interest of the patient and is not in the course of the advanced registered nurse practitioner's professional practice, without regard to his or her intent.

7. Prescribing, dispensing, or administering a medicinal drug appearing on any schedule set forth in chapter 893 to himself or herself, except a drug prescribed, dispensed, or administered to the advanced registered nurse practitioner by another practitioner authorized to prescribe, dispense, or administer medicinal drugs.

8. Prescribing, ordering, dispensing, administering, supplying, selling, or giving amygdalin (laetrile) to any person.

9. Dispensing a substance designated in s. 893.03(2) or (3) as a substance controlled in Schedule II or Schedule III, respectively, in violation of s. 465.0276.

10. Promoting or advertising through any communication medium the use, sale, or dispensing of a substance designated in s. 893.03 as a controlled substance.

(2) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

Section 18. Section 627.42392, Florida Statutes, is created to read:

627.42392 Prior authorization.—

(1) As used in this section, the term "health insurer" means an authorized insurer offering health insurance as defined in s. 624.603, a managed care plan as defined in s. 409.962(9),

or a health maintenance organization as defined in s. 641.19(12).

(2) Notwithstanding any other provision of law, in order to establish uniformity in the submission of prior authorization forms on or after January 1, 2017, a health insurer, or a pharmacy benefits manager on behalf of the health insurer, which does not use an electronic prior authorization form for its contracted providers shall use only the prior authorization form that has been approved by the Financial Services Commission in consultation with the Agency for Health Care Administration to obtain a prior authorization for a medical procedure, course of treatment, or prescription drug benefit. Such form may not exceed two pages in length, excluding any instructions or guiding documentation.

(3) The Financial Services Commission in consultation with the Agency for Health Care Administration shall adopt by rule guidelines for all prior authorization forms which ensure the general uniformity of such forms.

Section 19. Subsection (11) of section 627.6131, Florida Statutes, is amended to read:

627.6131 Payment of claims.—

(11) A health insurer may not retroactively deny a claim because of insured ineligibility:

(a) At any time, if the health insurer verified the eligibility of an insured at the time of treatment and provided an authorization number.

(b) More than 1 year after the date of payment of the claim.

Section 20. Subsection (10) of section 641.3155, Florida

Statutes, is amended to read:

641.3155 Prompt payment of claims.—

(10) A health maintenance organization may not retroactively deny a claim because of subscriber ineligibility:

(a) At any time, if the health maintenance organization verified the eligibility of an insured at the time of treatment and provided an authorization number.

(b) More than 1 year after the date of payment of the claim.

Section 21. Subsection (21) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(21) "Practitioner" means a physician licensed under ~~pursuant to~~ chapter 458, a dentist licensed under ~~pursuant to~~ chapter 466, a veterinarian licensed under ~~pursuant to~~ chapter 474, an osteopathic physician licensed under ~~pursuant to~~ chapter 459, an advanced registered nurse practitioner certified under chapter 464, a naturopath licensed under ~~pursuant to~~ chapter 462, a certified optometrist licensed under ~~pursuant to~~ chapter 463, ~~or~~ a podiatric physician licensed under ~~pursuant to~~ chapter 461, or a physician assistant licensed under chapter 458 or chapter 459, provided such practitioner holds a valid federal controlled substance registry number.

Section 22. Paragraph (n) of subsection (1) of section 948.03, Florida Statutes, is amended to read:

948.03 Terms and conditions of probation.—

(1) The court shall determine the terms and conditions of

probation. Conditions specified in this section do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. These conditions may include among them the following, that the probationer or offender in community control shall:

(n) Be prohibited from using intoxicants to excess or possessing any drugs or narcotics unless prescribed by a physician, an advanced registered nurse practitioner, or a physician assistant. The probationer or community controllee may ~~shall~~ not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.

Section 23. Paragraph (a) of subsection (1) and subsection (2) of section 458.348, Florida Statutes, are amended to read:

458.348 Formal supervisory relationships, standing orders, and established protocols; notice; standards.—

(1) NOTICE.—

(a) When a physician enters into a formal supervisory relationship or standing orders with an emergency medical technician or paramedic licensed pursuant to s. 401.27, which relationship or orders contemplate the performance of medical acts, or when a physician enters into an established protocol with an advanced registered nurse practitioner, which protocol contemplates the performance of medical ~~acts identified and approved by the joint committee pursuant to s. 464.003(2) or~~ acts set forth in s. 464.012(3) and (4), the physician shall submit notice to the board. The notice shall contain a statement in substantially the following form:

I, ...(name and professional license number of physician)..., of ...(address of physician)... have hereby entered into a formal supervisory relationship, standing orders, or an established protocol with ...(number of persons)... emergency medical technician(s), ...(number of persons)... paramedic(s), or ...(number of persons)... advanced registered nurse practitioner(s).

(2) ESTABLISHMENT OF STANDARDS BY JOINT COMMITTEE.—The joint committee ~~created under s. 464.003(2)~~ shall determine minimum standards for the content of established protocols pursuant to which an advanced registered nurse practitioner may perform medical acts ~~identified and approved by the joint committee pursuant to s. 464.003(2)~~ or acts set forth in s. 464.012(3) and (4) and shall determine minimum standards for supervision of such acts by the physician, unless the joint committee determines that any act set forth in s. 464.012(3) or (4) is not a medical act. Such standards shall be based on risk to the patient and acceptable standards of medical care and shall take into account the special problems of medically underserved areas. The standards developed by the joint committee shall be adopted as rules by the Board of Nursing and the Board of Medicine for purposes of carrying out their responsibilities pursuant to part I of chapter 464 and this chapter, respectively, but neither board shall have disciplinary powers over the licensees of the other board.

Section 24. Paragraph (a) of subsection (1) of section 459.025, Florida Statutes, is amended to read:

459.025 Formal supervisory relationships, standing orders,

and established protocols; notice; standards.—

(1) NOTICE.—

(a) When an osteopathic physician enters into a formal supervisory relationship or standing orders with an emergency medical technician or paramedic licensed pursuant to s. 401.27, which relationship or orders contemplate the performance of medical acts, or when an osteopathic physician enters into an established protocol with an advanced registered nurse practitioner, which protocol contemplates the performance of medical acts ~~identified and approved by the joint committee pursuant to s. 464.003(2)~~ or acts set forth in s. 464.012(3) and (4), the osteopathic physician shall submit notice to the board. The notice must contain a statement in substantially the following form:

I, ...(name and professional license number of osteopathic physician)..., of ...(address of osteopathic physician)... have hereby entered into a formal supervisory relationship, standing orders, or an established protocol with ...(number of persons)... emergency medical technician(s), ...(number of persons)... paramedic(s), or ...(number of persons)... advanced registered nurse practitioner(s).

Section 25. Subsection (10) of s. 458.331, paragraph (g) of subsection (7) of s. 458.347, subsection (10) of s. 459.015, paragraph (f) of subsection (7) of s. 459.022, and paragraph (b) of subsection (5) of s. 465.0158, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 456.072, Florida Statutes, in references thereto.

Section 26. Paragraph (mm) of subsection (1) of s. 456.072

and s. 466.02751, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 456.44, Florida Statutes, in references thereto.

Section 27. Section 458.303, paragraph (b) of subsection (7) of s. 458.3475, paragraph (e) of subsection (4) and paragraph (c) of subsection (9) of s. 459.022, and paragraph (b) of subsection (7) of s. 459.023, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 458.347, Florida Statutes, in references thereto.

Section 28. Paragraph (c) of subsection (3) of s. 464.012, Florida Statutes, is reenacted for the purpose of incorporating the amendment made by this act to s. 464.003, Florida Statutes, in a reference thereto.

Section 29. Paragraph (a) of subsection (1) of s. 456.041, subsections (1) and (2) of s. 458.348, and subsection (1) of s. 459.025, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 464.012, Florida Statutes, in references thereto.

Section 30. Subsection (7) of s. 464.0205, Florida Statutes, is reenacted for the purpose of incorporating the amendment made by this act to s. 464.013, Florida Statutes, in a reference thereto.

Section 31. Subsection (11) of s. 320.0848, subsection (2) of s. 464.008, subsection (5) of s. 464.009, and paragraph (b) of subsection (1), subsection (3), and paragraph (b) of subsection (4) of s. 464.0205, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 464.018, Florida Statutes, in references thereto.

Section 32. Section 775.051, Florida Statutes, is reenacted

for the purpose of incorporating the amendment made by this act to s. 893.02, Florida Statutes, in a reference thereto.

Section 33. Paragraph (a) of subsection (3) of s. 944.17, subsection (8) of s. 948.001, and paragraph (e) of subsection (1) of s. 948.101, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 948.03, Florida Statutes, in references thereto.

Section 34. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: January 27, 2016

I respectfully request that **Senate Bill #676**, relating to Access to Health Care Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16
Meeting Date

676
Bill Number (if applicable)

243646
Amendment Barcode (if applicable)

Topic Amendment to Name the Act

Name Jon Johnson

Job Title Consultant

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16
Meeting Date

676
Bill Number (if applicable)

243646
Amendment Barcode (if applicable)

Topic ARNP + PA Prescribing

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

~~Amendment~~

Representing Florida Nurse Practitioner Network

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-18-16
Meeting Date

676
Bill Number (if applicable)

2436446
Amendment Barcode (if applicable)

Topic ARNP & PA Prescribing

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Speaking: ☐ For ☐ Against ☐ Information

~~Waive Speaking:~~ (Amendment) ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

676
Bill Number (if applicable)

Topic Nurse Practitioner / PA Prescribing

Amendment Barcode (if applicable)

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Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Baptist Health South Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-18-16
Meeting Date

676
Bill Number (if applicable)

Topic ARNP + PA Prescribing

Amendment Barcode (if applicable)

Name Allison Carvajal

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Nurse Practitioner Network

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-18-16
Meeting Date

676
Bill Number (if applicable)

Topic APNP + PA Prescribing

Amendment Barcode (if applicable)

Name Martha DeCastro

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Email martha@fha.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-2016
Meeting Date

SB 676
Bill Number (if applicable)

Topic HEALTH CARE

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DRIVE
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City *State* *Zip*

Email

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 676
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

676
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic ARNP/PA prescribing

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida CHAIN

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2/18/16
Meeting Date

676
Bill Number (if applicable)

Topic ARNP/PA/Healthcare

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Healthcare Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016
Meeting Date

676
Bill Number (if applicable)

Topic Access to Health Care Services

Amendment Barcode (if applicable)

Name Chris Floyd

Job Title Consultant

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Phone 813-624-5117

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Assoc. of Nurse Practitioners

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

676
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Susan Salahshor

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/13/16
Meeting Date

Bill Number (if applicable)

Topic Quality Health Care Services

Amendment Barcode (if applicable)

Name Pat Mixon

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Academy of Physician Assistants

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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 Appropriations

BILL:	PCS/CS/SB 684 (434300)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senators Gaetz and Stargel
SUBJECT:	Choice in Sports
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bailey	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 684 revises student eligibility requirements for participation in interscholastic and intrascholastic extracurricular activities, expands Florida High School Athletic Association (FHSAA) membership options for private schools, establishes escalating penalties for recruiting violations, and increases educational choice and controlled open enrollment options.

Specifically, the bill:

- Allows students to be immediately eligible to join an existing team if the activity roster has not reached maximum size and the student has the requisite skills and abilities to participate;
- Prohibits a school district from delaying or preventing student participation in interscholastic and intrascholastic extracurricular activities;
- Allows a private school the option of joining the FHSAA on a per-sport basis;
- Prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association;
- Authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association;
- Establishes escalating penalties for recruiting violations;
- Requires an educator certificate to be revoked for a third recruiting offense in violation of FHSAA bylaws; and
- Expands the scope of controlled open enrollment options available to parents beyond school district boundaries, subject to capacity and maximum class size limits.

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The bill takes effect on July 1, 2016.

II. Present Situation:

Florida High School Athletics

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization of athletics in Florida public schools in grades 6 through 12.[1] The FHSAA is not a state agency, but is assigned quasi-governmental functions.[2]

Student Eligibility

To be eligible for participation in interscholastic[3] extracurricular activities,[4] a student must meet certain academic and conduct requirements.[5] Each student must meet the other requirements for participation established by the district school board.[6] The FHSAA is required to adopt bylaws that, unless specifically provided by statute, establish eligibility requirements for all students who participate in high school athletic competition in its member schools.[7]

The FHSAA bylaws governing residence allow students to be eligible to participate in high school athletic competitions in the schools in which he or she:[8]

- First enrolls each school year; or
- Makes himself or herself a candidate for an athletic team by engaging in practice before enrolling.[9]

The FHSAA bylaws governing student transfers:[10]

- Allow a student to be eligible in the school to which the student transferred during the school year if the transfer was made by a deadline established by the FHSAA, which may not be prior to the date authorized for the beginning of practice for the sport.[11]
- Require transfers to be allowed pursuant to the district school board policies in the case of transfer to a public school, or pursuant to the private school policies in the case of transfer to

[1] Section 1006.20, F.S.
[2] *Id*.
[3] The FHSAA defines an "interscholastic contest" as any competition between organized teams or individuals of different schools in a sport recognized or sanctioned by the FHSAA, and is subject to all regulations pertaining to such contests. Bylaw 8.1.1, FHSAA.
[4] "Extracurricular" means any school-authorized or education-related activity occurring during or outside the regular instructional school day. Section 1006.15(2), F.S.
[5] Section 1006.15(3)(a), F.S.
[6] Section 1006.15(4), F.S.
[7] Section 1006.20(2)(a), F.S.
[8] Section 1006.20(2)(a), F.S.
[9] Section 1002.20(17), F.S.
[10] Section 1006.20(2), F.S.
[11] Section 1006.20(2)(a), F.S.

a private school. The student shall remain eligible in that school so long as he or she is enrolled in that school.[12]

- Allow a student who transfers from a home education program, charter school, or from the Florida Virtual School full-time program to a public school before or during the first grading period of the school year to be academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student had a successful evaluation from the previous year.[13]
- Provide that requirements governing eligibility and transfer between member schools be applied similarly to public school students and private school students.[14]

The FHSAA, in cooperation with each district school board, facilitates a program for middle or high school students who attend a private school to be eligible to participate in an interscholastic or intrascholastic sport at a public high school, for which the student is zoned, if the private school is not a member of the FHSAA and does not offer an interscholastic or intrascholastic athletic program.[15]

Membership in the FHSAA

Any high school in the state, including charter schools, virtual schools, and home education cooperatives,[16] may become a member of the FHSAA and participate in FHSAA activities.[17] A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.[18] Membership in the FHSAA is not mandatory for any school.[19]

The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization.[20] The FHSAA is prohibited from taking retributory or discriminatory actions against member schools who participate in interscholastic competition with non-FHSAA member schools.[21] The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them are governed, unless otherwise specified in statute.[22] The FHSAA member schools may only engage in interscholastic contests with schools which are members of the FHSAA or with non-member schools that meet specific requirements designated in the FHSAA bylaws.[23]

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[12] *Id.*
[13] Section 1006.15(3)(c)6.- (d)6 and (f), F.S.
[14] Section 1006.20(2), F.S.
[15] Section 1006.15(8), F.S.
[16] A home education cooperative is defined by the FHSAA as a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. Bylaw 3.2.2.4, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.
[17] Section 1006.20, F.S.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id. at* (1)
[22] *Id.*
[23] Bylaw 8.3, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

Recruitment of Student Athletes

Florida law requires the FHSAA to adopt bylaws prohibiting the recruitment of student athletes.[24] Currently, the bylaws prohibit member schools from recruiting student athletes for athletic purposes.[25] "Athletic recruiting" is defined by the FHSAA as any effort by a school employee, athletic department staff member or representative of a school's athletic interests to pressure, urge, or entice a student to attend that school for the purpose of participating in interscholastic athletics.[26] The FHSAA sets forth specific behaviors that constitute recruiting, as well as identifying persons who are considered to represent a school's athletic interests.[27]

If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle.[28]

In addition to any other appropriate fine and sanction imposed on the school, its coaches, or adult representatives, the following penalties may be imposed against a school for recruiting violations:[29]

- Public reprimand;
- Financial penalty of a minimum of $2,500;
- Probation for one or more years;
- Prohibition against participating in certain interscholastic competitions;
- Prohibition against participating in any interscholastic competition for one or more years in the sport(s) in which the violation(s) occurred;
- Restricted membership for one or more years during which time some or all of the school's membership privileges may be restricted or denied; and
- Expulsion from membership in the FHSAA for one or more years.

The FHSAA must adopt bylaws that establish sanctions for coaches who have committed major violations of the FHSAA's bylaws and policies.[30] The bylaws prescribe penalties and an appeals process for athletic recruiting violations.[31]

[24] Section 1006.20(2)(b), F.S.
[25] The FHSAA defines recruiting as the use of undue influence or special inducement by anyone associated with the school in an attempt to encourage a prospective student to attend or remain at that school for the purpose of participating in interscholastic athletics. Bylaw 6.3, FHSAA.
[26] Policy 36.2.1, FHSAA. *Administrative Policies of the Florida High School Athletic Association, Inc*. (2015-16), *available a*t http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_policies.pdf.
[27] Policy 36, FHSAA.
[28] Section 1006.20(2)(b), F.S.
[29] Policy 36.5, FHSAA; Bylaw 10.1.2, FHSAA.
[30] Section 1006.20(2)(f), F.S. Major violations include, but are not limited to: knowingly allowing an ineligible student to participate in a contest representing a member school in an interscholastic contest; or committing a violation of the FHSAA's recruiting or sportsmanship policies.
[31] *Id.*

The FHSAA must adopt bylaws for the process and standards for FHSAA student eligibility determinations.[32] The bylaws must provide that student ineligibility must be established by clear and convincing evidence.[33]

Controlled Open Enrollment

Controlled open enrollment is a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.[34] School districts have the option to offer controlled open enrollment within the public schools in addition to existing choice programs such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment.[35] The district school board must adopt by rule and post on the district website a controlled open enrollment plan.[36] The controlled open enrollment plan must:[37]

- Adhere to federal desegregation requirements;
- Require an application process to participate in the controlled open enrollment program that allows parents to declare school preferences and includes placements of siblings within the same school;
- Use a lottery procedure to determine student assignment and establish an appeal process for hardship cases;
- Afford students in multiple session schools preferred access;
- Maintain socioeconomic, demographic, and racial balance; and
- Address the availability of transportation.

District school boards must annually report the number of students attending the various types of public schools of choice in the district.[38]

III. Effect of Proposed Changes:

This bill revises student eligibility requirements for participation in interscholastic and intrascholastic extracurricular activities, expands Florida High School Athletic Association (FHSAA) membership options for private schools, establishes escalating penalties for recruiting violations, and increases educational choice and controlled open enrollment options.

Specifically, the bill:

- Allows students to be immediately eligible to join an existing team if the activity roster has not reached maximum size and the student has the requisite skills and abilities to participate;
- Prohibits a school district from delaying or preventing student participation in interscholastic and intrascholastic extracurricular activities;

[32] Section 1006(2)(g), F.S.
[33] Section 1006.20(2)(g), F.S. Bylaw 4.6.2.3, FHSAA. The FHSAA defines clear and convincing evidence as the evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue. Bylaw 1.4.33, FHSAA.
[34] Section 1002.31, F.S.
[35] *Id.*
[36] *Id.*
[37] Section 1002.31(3), F.S
[38] Section 1002.31(4), F.S.

- Allows a private school the option of joining the FHSAA on a per-sport basis;
- Prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association;
- Authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association;
- Establishes escalating penalties for recruiting violations;
- Requires an educator certificate to be revoked for a third recruiting offense in violation of FHSAA bylaws; and
- Expands the scope of controlled open enrollment options available to parents beyond school district boundaries, subject to capacity and maximum class size limits.

Florida High School Athletics

Student Eligibility

The bill revises student eligibility requirements by:

- Prohibiting a school district from delaying eligibility or otherwise preventing a student participating in controlled open enrollment or a school choice program from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities;
- Defining "eligible to participate" to include, but not be limited to, a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests, and does not require a student to be placed on any specific team for interscholastic or intrascholastic extracurricular activities; and
- Allowing a student who transfers during the school year to join an existing team if the activity roster has not reached maximum size and if the coach determines the student has the required skill and ability to participate.

Additionally, the bill increases student eligibility options by:

- Prohibiting the FHSAA and school district from declaring a transfer student ineligible due to the student's inopportunity to comply with qualifying requirements;
- Enabling a private school student the option to participate at the public school zoned for the physical address, regardless of whether or not the school offers an interscholastic or intrascholastic athletic program; and
- Changing level of proof in an eligibility determination from "clear and convincing evidence" to "a preponderance of evidence."[39]

Membership in the FHSAA

The bill requires the FHSAA to allow a private school to join the FHSAA on a full-time or a per sport basis. This offers a private school the option of joining other athletic associations by individual sport while maintaining membership in FHSAA for other sports. In addition, the bill

[39] Preponderance of evidence is defined to mean the evidence which is at the greater weight or more convincing than the evidence which is offered in opposition to it. Black, Henry Campbell. A Dictionary of Law: Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern ... New York, NY: Lawbook Exchange, 1991.

prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association.

The bill authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association.

Recruitment of Student Athletes

The bill establishes escalating penalties for the recruitment of student athletes. Specifically, the bill enhances current recruitment penalties found in the FHSAA bylaws by adding stringent penalties for the recruitment of a student athlete by a school district employee or contractor. The bill requires the following penalties:

- First offense is a $5,000 forfeiture of pay.
- Second offense includes suspension without pay for 12 months from coaching, directing, or advertising an extracurricular activity and a $5,000 forfeiture of pay.
- Third offense includes:
  - $5,000 forfeiture of pay for the employee or contractor who committed the violation; and
  - For an individual who holds an educator certificate:
    - The FHSAA will refer the violation for review to determine if probable cause exists;
    - The Commissioner of Education will file a formal complaint against the individual if there is a finding of probable cause; and
    - If the complaint is upheld, the individual's educator certificate will be revoked by the Education Practices Commission for 3 years, in addition to FHSAA penalties. The Department of Education will also revoke any adjunct teaching certificates issued under s. 1012.57, F.S. and all permissions under s. 1012.39, F.S. and 1012.43, F.S. The educator will be ineligible for such certificates or permissions for a period of time equal to the period of revocation of his or her state-issued certificate.

The bill also specifies that, in instances in which a student is recruited by an adult who is not a school district employee or contractor, a school will forfeit every competition in which the recruited student participates.

Controlled Open Enrollment

The bill expands the scope of a school district's controlled open enrollment options by:

- Allowing a parent from any district in the state, whose child is not subject to a current expulsion order or suspension order, to enroll and transport the child to any public school that has not reached capacity in the district, subject to maximum class size limits, including charter schools;
- Requiring the receiving school district to accept the student and report the student for funding;
- Allowing a student who transfers to remain at the school chosen by the parent until the student completes the highest grade level at the school; and
- Permitting a school district to provide transportation for students participating in a controlled open enrollment program.

The bill elevates the transparency of the district school board controlled open enrollment plans by requiring the district to adopt by rule and visibly post on its website the process required to participate in controlled open enrollment. Additionally, the bill requires that the controlled open enrollment process must:

- Provide preferential treatment to:
  - Dependent children of active duty military personnel whose move resulted from military orders;
  - Children who have been relocated due to a foster care placement in a different school zone;
  - Children who move due to a change in custody due to separation, divorce, the serious illness of a custodial parent, the death of a parent, or a court order; or
  - Students residing in the school district;
- Maintain existing academic eligibility criteria for public school choice programs; and
- Identify schools that have not reached capacity.[40]

The bill takes effect on July 1, 2016.

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:

Under PCS/CS/SB 684, school district employees or contractors in violation of FHSAA recruiting bylaws will experience forfeiture of pay in the amount of $5,000 for each offense; potential suspension without pay for 12 months for a second offense; and revocation of the individual's educator certificate for a third offense.

[40] In determining the capacity of each school, the district school board shall incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and the long-term work programs required under s. 1013.35. The bill.

C. Government Sector Impact:

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The Education Practices Commission (EPC) may experience an increase in workload as a result of educator discipline cases associated with the recruiting penalties specified in the bill. Since the number of additional cases which may occur as a result of this bill is not known, the impact on the EPC is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1002.31, 1006.15, 1006.20, 1012.795, and 1012.796.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Education on January 25, 2016:
The committee substitute specifies that, in addition to an expulsion order, a student must not be subject to a suspension order to be guaranteed enrollment under the controlled open enrollment options.

CS by Education Pre-K – 12 on January 14, 2016:
The committee substitute modifies the bill as follows:

- Omits the authority for public schools to join the FHSAA on a per sport basis; and
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association.

B. Amendments:

None.


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576-02565-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to choice in sports; amending s. 1002.20, F.S.; revising public school choice options available to students to include CAPE digital tools, CAPE industry certifications, and collegiate high school programs; authorizing parents of public school students to seek private educational choice options through the Florida Personal Learning Scholarship Accounts Program under certain circumstances; revising student eligibility requirements for participating in high school athletic competitions; authorizing public schools to provide transportation to students participating in open enrollment; amending s. 1002.31, F.S.; requiring each district school board and charter school governing board to authorize a parent to have his or her child participate in controlled open enrollment; requiring the school district to report the student for purposes of the school district's funding; authorizing a school district to provide transportation to such students; requiring that each district school board adopt and publish on its website a controlled open enrollment process; specifying criteria for the process; prohibiting a school district from delaying or preventing a student who participates in controlled open enrollment from being immediately eligible to participate in certain activities; amending s. 1006.15, F.S.; defining the


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term "eligible to participate"; conforming provisions to changes made by the act; prohibiting a school district from delaying or preventing a student who participates in open controlled enrollment from being immediately eligible to participate in certain activities; authorizing a transfer student to immediately participate in interscholastic or intrascholastic activities under certain circumstances; prohibiting a school district or the Florida High School Athletic Association (FHSAA) from declaring a transfer student ineligible under certain circumstances; amending s. 1006.20, F.S.; requiring the FHSAA to allow a private school to maintain full membership in the association or to join by sport; prohibiting the FHSAA from discouraging a private school from maintaining membership in the FHSAA and another athletic association; authorizing the FHSAA to allow a public school to apply for consideration to join another athletic association; specifying penalties for recruiting violations; requiring a school to forfeit a competition in which a student who was recruited by specified adults participated; revising circumstances under which a student may be declared ineligible; requiring student ineligibility to be established by a preponderance of the evidence; amending ss. 1012.795 and 1012.796, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (6), paragraph (a) of subsection (17), and paragraph (a) of subsection (22) of section 1002.20, Florida Statutes, are amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(6) EDUCATIONAL CHOICE.—

(a) *Public school choices.*—Parents of public school students may seek <u>any</u> ~~whatever~~ public school choice options that are applicable and available to students in their school districts. These options may include controlled open enrollment, single-gender programs, lab schools, virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, auditory-oral education programs, advanced placement, dual enrollment, International Baccalaureate, International General Certificate of Secondary Education (pre-AICE), <u>CAPE digital tools, CAPE industry certifications, collegiate high school programs,</u> Advanced International Certificate of Education, early admissions, credit by examination or demonstration of competency, the New World School of the Arts, the Florida School for the Deaf and the Blind, and the Florida Virtual School. These options may also include the public <u>educational</u> ~~school~~

choice options of the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program.

(b) *Private <u>educational</u> ~~school~~ choices.*—Parents of public school students may seek private <u>educational</u> ~~school~~ choice options under certain programs.

1. Under the McKay Scholarships for Students with Disabilities Program, the parent of a public school student with a disability may request and receive a McKay Scholarship for the student to attend a private school in accordance with s. 1002.39.

2. Under the Florida Tax Credit Scholarship Program, the parent of a student who qualifies for free or reduced-price school lunch or who is currently placed, or during the previous state fiscal year was placed, in foster care as defined in s. 39.01 may seek a scholarship from an eligible nonprofit scholarship-funding organization in accordance with s. 1002.395.

<u>3. Under the Florida Personal Learning Scholarship Accounts Program, the parent of a student with a qualifying disability may apply for a personal learning scholarship to be used for individual educational needs in accordance with s. 1002.385.</u>

(17) ATHLETICS; PUBLIC HIGH SCHOOL.—

(a) *Eligibility.*—Eligibility requirements for all students participating in high school athletic competition must allow a student to be <u>immediately</u> eligible in the school in which he or she first enrolls each school year, the school in which the student makes himself or herself a candidate for an athletic team by engaging in practice before enrolling, or the school to which the student has transferred ~~with approval of the district school board~~, in accordance with ~~the provisions of~~ s.

1006.20(2)(a).

(22) TRANSPORTATION.—

(a) *Transportation to school.*—Public school students shall be provided transportation to school, in accordance with ~~the provisions of~~ s. 1006.21(3)(a). Public school students may be provided transportation to school in accordance with the controlled open enrollment provisions of s. 1002.31(2).

Section 2. Section 1002.31, Florida Statutes, is amended to read:

1002.31 Controlled open enrollment; public school parental choice.—

(1) As used in this section, "controlled open enrollment" means a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.

(2)(a) As part of a school district's controlled open enrollment, and in addition to the existing public school choice programs provided in s. 1002.20(6)(a), each district school board shall allow a parent from any school district in the state whose child is not subject to a current expulsion or suspension order to enroll his or her child in and transport his or her child to any public school that has not reached capacity in the district, subject to the maximum class size pursuant to s. 1003.03 and s. 1, Art. IX of the State Constitution. The school district shall accept the student, pursuant to that school district's controlled open enrollment participation process, and report the student for purposes of the school district's funding pursuant to the Florida Education Finance Program. A school district may provide transportation to students described under

this subsection at the district school board's discretion.

(b) Each charter school governing board shall allow a parent whose child is not subject to a current expulsion or suspension order to enroll his or her child in and transport his or her child to the charter school if the school has not reached capacity, subject to the maximum class size pursuant to s. 1003.03 and s. 1, Art. IX of the State Constitution, and the enrollment limitations pursuant to s. 1002.33(10)(e)1., 2., 5., 6., and 7. A charter school may provide transportation to students described under this subsection at the discretion of the charter school's governing board.

(c) For purposes of continuity of educational choice, a student who transfers pursuant to paragraph (a) or paragraph (b) may remain at the school chosen by the parent until the student completes the highest grade level at the school ~~may offer controlled open enrollment within the public schools which is in addition to the existing choice programs such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment~~.

(3) Each district school board ~~offering controlled open enrollment~~ shall adopt by rule and post on its website the process required to participate in controlled open enrollment. The process ~~a controlled open enrollment plan which~~ must:

(a) Adhere to federal desegregation requirements.

(b) Allow ~~Include an application process required to participate in controlled open enrollment that allows~~ parents to declare school preferences, including placement of siblings within the same school.

(c) Provide a lottery procedure to determine student

assignment and establish an appeals process for hardship cases.

(d) Afford parents of students in multiple session schools preferred access to controlled open enrollment.

(e) Maintain socioeconomic, demographic, and racial balance.

(f) Address the availability of transportation.

(g) Maintain existing academic eligibility criteria for public school choice programs pursuant to s. 1002.20(6)(a).

(h) Identify schools that have not reached capacity, as determined by the school district. In determining the capacity of each school, the district school board shall incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and the long-term work programs required under s. 1013.35.

(i) Ensure that each district school board adopts a policy to provide preferential treatment to all of the following:

1. Dependent children of active duty military personnel whose move resulted from military orders.

2. Children who have been relocated due to a foster care placement in a different school zone.

3. Children who move due to a change in custody due to separation, divorce, the serious illness of a custodial parent, the death of a parent, or a court order.

4. Students residing in the school district.

(4) In accordance with the reporting requirements of s. 1011.62, each district school board shall annually report the number of students exercising public school choice, by type ~~attending the various types of public schools of choice in the district~~, in accordance with ~~including schools such as virtual~~

~~instruction programs, magnet schools, and public charter schools, according to~~ rules adopted by the State Board of Education.

(5) For a school or program that is a public school of choice under this section, the calculation for compliance with maximum class size pursuant to s. 1003.03 is the average number of students at the school level.

(6) A school district may not delay eligibility or otherwise prevent a student participating in controlled open enrollment or a choice program from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities.

Section 3. Subsection (3) and paragraph (a) of subsection (8) of section 1006.15, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

1006.15 Student standards for participation in interscholastic and intrascholastic extracurricular student activities; regulation.—

(3)(a) As used in this section and s. 1006.20, the term "eligible to participate" includes, but is not limited to, a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests. The term does not mean that a student must be placed on any specific team for interscholastic or intrascholastic extracurricular activities. To be eligible to participate in interscholastic extracurricular student activities, a student must:

1. Maintain a grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the previous semester or a

cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1002.3105(5) or s. 1003.4282.

2. Execute and fulfill the requirements of an academic performance contract between the student, the district school board, the appropriate governing association, and the student's parents, if the student's cumulative grade point average falls below 2.0, or its equivalent, on a 4.0 scale in the courses required by s. 1002.3105(5) or s. 1003.4282. At a minimum, the contract must require that the student attend summer school, or its graded equivalent, between grades 9 and 10 or grades 10 and 11, as necessary.

3. Have a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1002.3105(5) or s. 1003.4282 during his or her junior or senior year.

4. Maintain satisfactory conduct, including adherence to appropriate dress and other codes of student conduct policies described in s. 1006.07(2). If a student is convicted of, or is found to have committed, a felony or a delinquent act that would have been a felony if committed by an adult, regardless of whether adjudication is withheld, the student's participation in interscholastic extracurricular activities is contingent upon established and published district school board policy.

(b) Any student who is exempt from attending a full school day based on rules adopted by the district school board for double session schools or programs, experimental schools, or schools operating under emergency conditions must maintain the grade point average required by this section and pass each class

for which he or she is enrolled.

(c) An individual home education student is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could ~~choose to~~ attend ~~pursuant to district or interdistrict controlled open enrollment provisions~~, or may develop an agreement to participate at a private school, in the interscholastic extracurricular activities of that school, provided the following conditions are met:

1. The home education student must meet the requirements of the home education program pursuant to s. 1002.41.

2. During the period of participation at a school, the home education student must demonstrate educational progress as required in paragraph (b) in all subjects taken in the home education program by a method of evaluation agreed upon by the parent and the school principal which may include: review of the student's work by a certified teacher chosen by the parent; grades earned through correspondence; grades earned in courses taken at a Florida College System institution, university, or trade school; standardized test scores above the 35th percentile; or any other method designated in s. 1002.41.

3. The home education student must meet the same residency requirements as other students in the school at which he or she participates.

4. The home education student must meet the same standards of acceptance, behavior, and performance as required of other students in extracurricular activities.

5. The student must register with the school his or her intent to participate in interscholastic extracurricular

activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A home education student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a home education program to a public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a home education student until the student has successfully completed one grading period in home education pursuant to subparagraph 2. to become eligible to participate as a home education student.

(d) An individual charter school student pursuant to s. 1002.33 is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could ~~choose to~~ attend, ~~pursuant to district or interdistrict controlled open-enrollment provisions,~~ in any interscholastic extracurricular activity of that school, unless such activity is provided by the student's charter school, if the following conditions are met:

1. The charter school student must meet the requirements of the charter school education program as determined by the charter school governing board.

2. During the period of participation at a school, the charter school student must demonstrate educational progress as required in paragraph (b).

3. The charter school student must meet the same residency requirements as other students in the school at which he or she participates.

4. The charter school student must meet the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.

5. The charter school student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A charter school student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a charter school program to a traditional public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period if the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a charter school student until the student has successfully completed one grading period in a charter school pursuant to subparagraph 2. to become eligible to

participate as a charter school student.

(e) A student of the Florida Virtual School full-time program may participate in any interscholastic extracurricular activity at the public school to which the student would be assigned according to district school board attendance area policies or which the student could ~~choose to~~ attend, ~~pursuant to district or interdistrict controlled open enrollment policies,~~ if the student:

1. During the period of participation in the interscholastic extracurricular activity, meets the requirements in paragraph (a).

2. Meets any additional requirements as determined by the board of trustees of the Florida Virtual School.

3. Meets the same residency requirements as other students in the school at which he or she participates.

4. Meets the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.

5. Registers his or her intent to participate in interscholastic extracurricular activities with the school before the beginning date of the season for the activity in which he or she wishes to participate. A Florida Virtual School student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

(f) A student who transfers from the Florida Virtual School full-time program to a traditional public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period if

the student has a successful evaluation from the previous school year pursuant to paragraph (a).

(g) A public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a Florida Virtual School student until the student successfully completes one grading period in the Florida Virtual School pursuant to paragraph (a).

(h) A school district may not delay eligibility or otherwise prevent a student participating in controlled open enrollment, or a choice program, from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities.

(8)(a) The Florida High School Athletic Association (FHSAA), in cooperation with each district school board, shall facilitate a program in which a middle school or high school student who attends a private school shall be eligible to participate in an interscholastic or intrascholastic sport at a public high school, a public middle school, or a 6-12 public school that is zoned for the physical address at which the student resides if:

1. The private school in which the student is enrolled is not a member of the FHSAA ~~and does not offer an interscholastic or intrascholastic athletic program~~.

2. The private school student meets the guidelines for the conduct of the program established by the FHSAA's board of directors and the district school board. At a minimum, such guidelines shall provide:

a. A deadline for each sport by which the private school

student's parents must register with the public school in writing their intent for their child to participate at that school in the sport.

b. Requirements for a private school student to participate, including, but not limited to, meeting the same standards of eligibility, acceptance, behavior, educational progress, and performance which apply to other students participating in interscholastic or intrascholastic sports at a public school or FHSAA member private school.

(9) A student who transfers to a school during the school year may seek to immediately join an existing team if the roster for the specific interscholastic or intrascholastic extracurricular activity has not reached the activity's identified maximum size and if the coach for the activity determines that the student has the requisite skill and ability to participate. The FHSAA and school district may not declare such a student ineligible because the student did not have the opportunity to comply with qualifying requirements.

Section 4. Subsection (1) and paragraphs (a), (b), (c), and (g) of subsection (2) of section 1006.20, Florida Statutes, are amended to read:

1006.20 Athletics in public K-12 schools.—

(1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High School Athletic Association (FHSAA) is designated as the governing nonprofit organization of athletics in Florida public schools. If the FHSAA fails to meet the provisions of this section, the commissioner shall designate a nonprofit organization to govern athletics with the approval of the State Board of Education. The FHSAA is not a state agency as defined

in s. 120.52. The FHSAA shall be subject to the provisions of s. 1006.19. A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA. Any high school in the state, including charter schools, virtual schools, and home education cooperatives, may become a member of the FHSAA and participate in the activities of the FHSAA. However, membership in the FHSAA is not mandatory for any school. The FHSAA must allow a private school the option of maintaining full membership in the association or joining by sport and may not discourage a private school from simultaneously maintaining membership in another athletic association. The FHSAA may allow a public school the option to apply for consideration to join another athletic association. The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization, and may not take any retributory or discriminatory action against any of its member schools that participate in interscholastic competition with non-FHSAA member Florida schools. The FHSAA may not unreasonably withhold its approval of an application to become an affiliate member of the National Federation of State High School Associations submitted by any other organization that governs interscholastic athletic competition in this state. The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them, are governed, unless otherwise specifically provided by statute. For the purposes of this section, "high school" includes grades 6 through 12.

(2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

(a) The FHSAA shall adopt bylaws that, unless specifically provided by statute, establish eligibility requirements for all students who participate in high school athletic competition in its member schools. The bylaws governing residence and transfer shall allow the student to be immediately eligible in the school in which he or she first enrolls each school year or the school in which the student makes himself or herself a candidate for an athletic team by engaging in a practice prior to enrolling in the school. The bylaws shall also allow the student to be immediately eligible in the school to which the student has transferred ~~during the school year if the transfer is made by a deadline established by the FHSAA, which may not be prior to the date authorized for the beginning of practice for the sport. These transfers shall be allowed pursuant to the district school board policies in the case of transfer to a public school or pursuant to the private school policies in the case of transfer to a private school~~. The student shall be eligible in that school so long as he or she remains enrolled in that school. Subsequent eligibility shall be determined and enforced through the FHSAA's bylaws. Requirements governing eligibility and transfer between member schools shall be applied similarly to public school students and private school students.

(b) The FHSAA shall adopt bylaws that specifically prohibit the recruiting of students for athletic purposes. The bylaws shall prescribe penalties and an appeals process for athletic recruiting violations.

1. If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the

school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle, in addition to the penalties in subparagraphs 2. and 3., and any other appropriate fine or ~~and~~ sanction imposed on the school, its coaches, or adult representatives who violate recruiting rules.

2. Any recruitment by a school district employee or contractor in violation of FHSAA bylaws results in escalating punishments as follows:

a. For a first offense, a $5,000 forfeiture of pay for the school district employee or contractor who committed the violation.

b. For a second offense, suspension without pay for 12 months from coaching, directing, or advertising an extracurricular activity and a $5,000 forfeiture of pay for the school district employee or contractor who committed the violation.

c. For a third offense, a $5,000 forfeiture of pay for the school district employee or contractor who committed the violation. If the individual who committed the violation holds an educator certificate, the FHSAA shall also refer the violation to the department for review pursuant to s. 1012.796 to determine whether probable cause exists, and, if there is a finding of probable cause, the commissioner shall file a formal complaint against the individual. If the complaint is upheld, the individual's educator certificate shall be revoked for 3 years, in addition to any penalties available under s. 1012.796. Additionally, the department shall revoke any adjunct teaching certificates issued pursuant to s. 1012.57 and all permissions

under ss. 1012.39 and 1012.43, and the educator is ineligible for such certificates or permissions for a period of time equal to the period of revocation of his or her state-issued certificate.

3. Notwithstanding any other provision of law, a school shall forfeit every competition in which a student participated who was recruited by an adult who is not a school district employee or contractor in violation of FHSAA bylaws.

4. A student may not be declared ineligible based on violation of recruiting rules unless the student or parent has falsified any enrollment or eligibility document or accepted any benefit ~~or any promise of benefit~~ if such benefit is not generally available to the school's students or family members or is based in any way on athletic interest, potential, or performance.

(c) The FHSAA shall adopt bylaws that require all students participating in interscholastic athletic competition or who are candidates for an interscholastic athletic team to satisfactorily pass a medical evaluation each year prior to participating in interscholastic athletic competition or engaging in any practice, tryout, workout, or other physical activity associated with the student's candidacy for an interscholastic athletic team. Such medical evaluation may be administered only by a practitioner licensed under chapter 458, chapter 459, chapter 460, or s. 464.012, and in good standing with the practitioner's regulatory board. The bylaws shall establish requirements for eliciting a student's medical history and performing the medical evaluation required under this paragraph, which shall include a physical assessment of the

student's physical capabilities to participate in interscholastic athletic competition as contained in a uniform preparticipation physical evaluation and history form. The evaluation form shall incorporate the recommendations of the American Heart Association for participation cardiovascular screening and shall provide a place for the signature of the practitioner performing the evaluation with an attestation that each examination procedure listed on the form was performed by the practitioner or by someone under the direct supervision of the practitioner. The form shall also contain a place for the practitioner to indicate if a referral to another practitioner was made in lieu of completion of a certain examination procedure. The form shall provide a place for the practitioner to whom the student was referred to complete the remaining sections and attest to that portion of the examination. The preparticipation physical evaluation form shall advise students to complete a cardiovascular assessment and shall include information concerning alternative cardiovascular evaluation and diagnostic tests. Results of such medical evaluation must be provided to the school. A student is not ~~No student shall be~~ eligible to participate, as provided in s. 1006.15(3), in any interscholastic athletic competition or engage in any practice, tryout, workout, or other physical activity associated with the student's candidacy for an interscholastic athletic team until the results of the medical evaluation have been received and approved by the school.

(g) The FHSAA shall adopt bylaws establishing the process and standards by which FHSAA determinations of eligibility are made. Such bylaws shall provide that:

1. Ineligibility must be established by a preponderance of the ~~clear and convincing~~ evidence;

2. Student athletes, parents, and schools must have notice of the initiation of any investigation or other inquiry into eligibility and may present, to the investigator and to the individual making the eligibility determination, any information or evidence that is credible, persuasive, and of a kind reasonably prudent persons rely upon in the conduct of serious affairs;

3. An investigator may not determine matters of eligibility but must submit information and evidence to the executive director or a person designated by the executive director or by the board of directors for an unbiased and objective determination of eligibility; and

4. A determination of ineligibility must be made in writing, setting forth the findings of fact and specific violation upon which the decision is based.

Section 5. Paragraph (o) is added to subsection (1) of section 1012.795, Florida Statutes, and subsection (5) of that section is amended, to read:

1012.795 Education Practices Commission; authority to discipline.—

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the

educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

(o) Has committed a third recruiting offense as determined by the Florida High School Athletic Association (FHSAA) pursuant to s. 1006.20(2)(b).

(5) Each district school superintendent and the governing authority of each university lab school, state-supported school, ~~or~~ private school, and the FHSAA shall report to the department the name of any person certified pursuant to this chapter or employed and qualified pursuant to s. 1012.39:

(a) Who has been convicted of, or who has pled nolo contendere to, a misdemeanor, felony, or any other criminal charge, other than a minor traffic infraction;

(b) Who that official has reason to believe has committed or is found to have committed any act which would be a ground for revocation or suspension under subsection (1); or

(c) Who has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.

Section 6. Subsections (3) and (7) of section 1012.796, Florida Statutes, are amended to read:

1012.796 Complaints against teachers and administrators; procedure; penalties.—

(3) The department staff shall advise the commissioner concerning the findings of the investigation and of all referrals by the Florida High School Athletic Association (FHSAA) pursuant to ss. 1006.20(2)(b) and 1012.795. The department general counsel or members of that staff shall review the investigation or the referral and advise the commissioner concerning probable cause or lack thereof. The determination of probable cause shall be made by the commissioner. The commissioner shall provide an opportunity for a conference, if requested, prior to determining probable cause. The commissioner may enter into deferred prosecution agreements in lieu of finding probable cause if, in his or her judgment, such agreements are in the best interests of the department, the certificateholder, and the public. Such deferred prosecution agreements shall become effective when filed with the clerk of the Education Practices Commission. However, a deferred prosecution agreement shall not be entered into if there is probable cause to believe that a felony or an act of moral turpitude, as defined by rule of the State Board of Education, has occurred, or for referrals by the FHSAA. Upon finding no probable cause, the commissioner shall dismiss the complaint.

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a teaching certificate or

for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed $2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon employment or termination of employment in the state in any public or private position requiring a Florida educator's certificate.

2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

3. Pay to the commission within the first 6 months of each probation year the administrative costs of monitoring probation assessed to the educator.

4. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.

5. Satisfactorily perform his or her assigned duties in a competent, professional manner.

6. Bear all costs of complying with the terms of a final order entered by the commission.

(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

(g) Imposition of an administrative sanction, upon a person whose teaching certificate has expired, for an act or acts committed while that person possessed a teaching certificate or an expired certificate subject to late renewal, which sanction bars that person from applying for a new certificate for a period of 10 years or less, or permanently.

(h) Refer the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

The penalties imposed under this subsection are in addition to, and not in lieu of, the penalties required for a third recruiting offense pursuant to s. 1006.20(2)(b).

Section 7. This act shall take effect July 1, 2016.

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 Appropriations

BILL:	CS/CS/SB 684
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senators Gaetz and Stargel
SUBJECT:	Choice in Sports
DATE:	February 18, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bailey	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 684 revises student eligibility requirements for participation in interscholastic and intrascholastic extracurricular activities, expands Florida High School Athletic Association (FHSAA) membership options for private schools, establishes escalating penalties for recruiting violations, and increases educational choice and controlled open enrollment options.

Specifically, the bill:

- Allows students to be immediately eligible to join an existing team if the activity roster has not reached maximum size and the student has the requisite skills and abilities to participate;
- Prohibits a school district from delaying or preventing student participation in interscholastic and intrascholastic extracurricular activities;
- Allows a private school the option of joining the FHSAA on a per-sport basis;
- Prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association;
- Authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association;
- Establishes escalating penalties for recruiting violations;
- Requires an educator certificate to be revoked for a third recruiting offense in violation of FHSAA bylaws; and
- Expands the scope of controlled open enrollment options available to parents beyond school district boundaries, subject to capacity and maximum class size limits.

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The bill takes effect on July 1, 2016.

II. Present Situation:

Florida High School Athletics

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization of athletics in Florida public schools in grades 6 through 12.[1] The FHSAA is not a state agency, but is assigned quasi-governmental functions.[2]

Student Eligibility

To be eligible for participation in interscholastic[3] extracurricular activities,[4] a student must meet certain academic and conduct requirements.[5] Each student must meet the other requirements for participation established by the district school board.[6] The FHSAA is required to adopt bylaws that, unless specifically provided by statute, establish eligibility requirements for all students who participate in high school athletic competition in its member schools.[7]

The FHSAA bylaws governing residence allow students to be eligible to participate in high school athletic competitions in the schools in which he or she:[8]

- First enrolls each school year; or
- Makes himself or herself a candidate for an athletic team by engaging in practice before enrolling.[9]

The FHSAA bylaws governing student transfers:[10]

- Allow a student to be eligible in the school to which the student transferred during the school year if the transfer was made by a deadline established by the FHSAA, which may not be prior to the date authorized for the beginning of practice for the sport.[11]
- Require transfers to be allowed pursuant to the district school board policies in the case of transfer to a public school, or pursuant to the private school policies in the case of transfer to

[1] Section 1006.20, F.S.
[2] *Id*.
[3] The FHSAA defines an "interscholastic contest" as any competition between organized teams or individuals of different schools in a sport recognized or sanctioned by the FHSAA, and is subject to all regulations pertaining to such contests. Bylaw 8.1.1, FHSAA.
[4] "Extracurricular" means any school-authorized or education-related activity occurring during or outside the regular instructional school day. Section 1006.15(2), F.S.
[5] Section 1006.15(3)(a), F.S.
[6] Section 1006.15(4), F.S.
[7] Section 1006.20(2)(a), F.S.
[8] Section 1006.20(2)(a), F.S.
[9] Section 1002.20(17), F.S.
[10] Section 1006.20(2), F.S.
[11] Section 1006.20(2)(a), F.S.

a private school. The student shall remain eligible in that school so long as he or she is enrolled in that school.[12]

- Allow a student who transfers from a home education program, charter school, or from the Florida Virtual School full-time program to a public school before or during the first grading period of the school year to be academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student had a successful evaluation from the previous year.[13]
- Provide that requirements governing eligibility and transfer between member schools be applied similarly to public school students and private school students.[14]

The FHSAA, in cooperation with each district school board, facilitates a program for middle or high school students who attend a private school to be eligible to participate in an interscholastic or intrascholastic sport at a public high school, for which the student is zoned, if the private school is not a member of the FHSAA and does not offer an interscholastic or intrascholastic athletic program.[15]

Membership in the FHSAA

Any high school in the state, including charter schools, virtual schools, and home education cooperatives,[16] may become a member of the FHSAA and participate in FHSAA activities.[17] A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.[18] Membership in the FHSAA is not mandatory for any school.[19]

The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization.[20] The FHSAA is prohibited from taking retributory or discriminatory actions against member schools who participate in interscholastic competition with non-FHSAA member schools.[21] The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them are governed, unless otherwise specified in statute.[22] The FHSAA member schools may only engage in interscholastic contests with schools which are members of the FHSAA or with non-member schools that meet specific requirements designated in the FHSAA bylaws.[23]

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[12] *Id.*
[13] Section 1006.15(3)(c)6.- (d)6 and (f), F.S.
[14] Section 1006.20(2), F.S.
[15] Section 1006.15(8), F.S.
[16] A home education cooperative is defined by the FHSAA as a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. Bylaw 3.2.2.4, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.
[17] Section 1006.20, F.S.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id. at* (1)
[22] *Id.*
[23] Bylaw 8.3, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

Recruitment of Student Athletes

Florida law requires the FHSAA to adopt bylaws prohibiting the recruitment of student athletes.[24] Currently, the bylaws prohibit member schools from recruiting student athletes for athletic purposes.[25] "Athletic recruiting" is defined by the FHSAA as any effort by a school employee, athletic department staff member or representative of a school's athletic interests to pressure, urge, or entice a student to attend that school for the purpose of participating in interscholastic athletics.[26] The FHSAA sets forth specific behaviors that constitute recruiting, as well as identifying persons who are considered to represent a school's athletic interests.[27]

If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle.[28]

In addition to any other appropriate fine and sanction imposed on the school, its coaches, or adult representatives, the following penalties may be imposed against a school for recruiting violations:[29]

- Public reprimand;
- Financial penalty of a minimum of $2,500;
- Probation for one or more years;
- Prohibition against participating in certain interscholastic competitions;
- Prohibition against participating in any interscholastic competition for one or more years in the sport(s) in which the violation(s) occurred;
- Restricted membership for one or more years during which time some or all of the school's membership privileges may be restricted or denied; and
- Expulsion from membership in the FHSAA for one or more years.

The FHSAA must adopt bylaws that establish sanctions for coaches who have committed major violations of the FHSAA's bylaws and policies.[30] The bylaws prescribe penalties and an appeals process for athletic recruiting violations.[31]

[24] Section 1006.20(2)(b), F.S.
[25] The FHSAA defines recruiting as the use of undue influence or special inducement by anyone associated with the school in an attempt to encourage a prospective student to attend or remain at that school for the purpose of participating in interscholastic athletics. Bylaw 6.3, FHSAA.
[26] Policy 36.2.1, FHSAA. *Administrative Policies of the Florida High School Athletic Association, Inc*. (2015-16), *available a*t http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_policies.pdf.
[27] Policy 36, FHSAA.
[28] Section 1006.20(2)(b), F.S.
[29] Policy 36.5, FHSAA; Bylaw 10.1.2, FHSAA.
[30] Section 1006.20(2)(f), F.S. Major violations include, but are not limited to: knowingly allowing an ineligible student to participate in a contest representing a member school in an interscholastic contest; or committing a violation of the FHSAA's recruiting or sportsmanship policies.
[31] *Id*.

The FHSAA must adopt bylaws for the process and standards for FHSAA student eligibility determinations.[32] The bylaws must provide that student ineligibility must be established by clear and convincing evidence.[33]

Controlled Open Enrollment

Controlled open enrollment is a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.[34] School districts have the option to offer controlled open enrollment within the public schools in addition to existing choice programs such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment.[35] The district school board must adopt by rule and post on the district website a controlled open enrollment plan.[36] The controlled open enrollment plan must:[37]

- Adhere to federal desegregation requirements;
- Require an application process to participate in the controlled open enrollment program that allows parents to declare school preferences and includes placements of siblings within the same school;
- Use a lottery procedure to determine student assignment and establish an appeal process for hardship cases;
- Afford students in multiple session schools preferred access;
- Maintain socioeconomic, demographic, and racial balance; and
- Address the availability of transportation.

District school boards must annually report the number of students attending the various types of public schools of choice in the district.[38]

III. Effect of Proposed Changes:

This bill revises student eligibility requirements for participation in interscholastic and intrascholastic extracurricular activities, expands Florida High School Athletic Association (FHSAA) membership options for private schools, establishes escalating penalties for recruiting violations, and increases educational choice and controlled open enrollment options.

Specifically, the bill:

- Allows students to be immediately eligible to join an existing team if the activity roster has not reached maximum size and the student has the requisite skills and abilities to participate;
- Prohibits a school district from delaying or preventing student participation in interscholastic and intrascholastic extracurricular activities;

[32] Section 1006(2)(g), F.S.
[33] Section 1006.20(2)(g), F.S. Bylaw 4.6.2.3, FHSAA. The FHSAA defines clear and convincing evidence as the evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue. Bylaw 1.4.33, FHSAA.
[34] Section 1002.31, F.S.
[35] *Id.*
[36] *Id.*
[37] Section 1002.31(3), F.S
[38] Section 1002.31(4), F.S.

- Allows a private school the option of joining the FHSAA on a per-sport basis;
- Prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association;
- Authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association;
- Establishes escalating penalties for recruiting violations;
- Requires an educator certificate to be revoked for a third recruiting offense in violation of FHSAA bylaws; and
- Expands the scope of controlled open enrollment options available to parents beyond school district boundaries, subject to capacity and maximum class size limits.

Florida High School Athletics

Student Eligibility

The bill revises student eligibility requirements by:

- Prohibiting a school district from delaying eligibility or otherwise preventing a student participating in controlled open enrollment or a school choice program from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities;
- Defining "eligible to participate" to include, but not be limited to, a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests, and does not require a student to be placed on any specific team for interscholastic or intrascholastic extracurricular activities; and
- Allowing a student who transfers during the school year to join an existing team if the activity roster has not reached maximum size and if the coach determines the student has the required skill and ability to participate.

Additionally, the bill increases student eligibility options by:

- Prohibiting the FHSAA and school district from declaring a transfer student ineligible due to the student's inopportunity to comply with qualifying requirements;
- Enabling a private school student the option to participate at the public school zoned for the physical address, regardless of whether or not the school offers an interscholastic or intrascholastic athletic program; and
- Changing level of proof in an eligibility determination from "clear and convincing evidence" to "a preponderance of evidence."[39]

Membership in the FHSAA

The bill requires the FHSAA to allow a private school to join the FHSAA on a full-time or a per sport basis. This offers a private school the option of joining other athletic associations by individual sport while maintaining membership in FHSAA for other sports. In addition, the bill

[39] Preponderance of evidence is defined to mean the evidence which is at the greater weight or more convincing than the evidence which is offered in opposition to it. Black, Henry Campbell. A Dictionary of Law: Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern ... New York, NY: Lawbook Exchange, 1991.

prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association.

The bill authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association.

Recruitment of Student Athletes

The bill establishes escalating penalties for the recruitment of student athletes. Specifically, the bill enhances current recruitment penalties found in the FHSAA bylaws by adding stringent penalties for the recruitment of a student athlete by a school district employee or contractor. The bill requires the following penalties:

- First offense is a $5,000 forfeiture of pay.
- Second offense includes suspension without pay for 12 months from coaching, directing, or advertising an extracurricular activity and a $5,000 forfeiture of pay.
- Third offense includes:
  - $5,000 forfeiture of pay for the employee or contractor who committed the violation; and
  - For an individual who holds an educator certificate:
    - The FHSAA will refer the violation for review to determine if probable cause exists;
    - The Commissioner of Education will file a formal complaint against the individual if there is a finding of probable cause; and
    - If the complaint is upheld, the individual's educator certificate will be revoked by the Education Practices Commission for 3 years, in addition to FHSAA penalties. The Department of Education will also revoke any adjunct teaching certificates issued under s. 1012.57, F.S. and all permissions under s. 1012.39, F.S. and 1012.43, F.S. The educator will be ineligible for such certificates or permissions for a period of time equal to the period of revocation of his or her state-issued certificate.

The bill also specifies that, in instances in which a student is recruited by an adult who is not a school district employee or contractor, a school will forfeit every competition in which the recruited student participates.

Controlled Open Enrollment

The bill expands the scope of a school district's controlled open enrollment options by:

- Allowing a parent from any district in the state, whose child is not subject to a current expulsion order or suspension order, to enroll and transport the child to any public school that has not reached capacity in the district, subject to maximum class size limits, including charter schools;
- Requiring the receiving school district to accept the student and report the student for funding;
- Allowing a student who transfers to remain at the school chosen by the parent until the student completes the highest grade level at the school; and
- Permitting a school district to provide transportation for students participating in a controlled open enrollment program.

The bill elevates the transparency of the district school board controlled open enrollment plans by requiring the district to adopt by rule and visibly post on its website the process required to participate in controlled open enrollment. Additionally, the bill requires that the controlled open enrollment process must:

- Provide preferential treatment to:
  - Dependent children of active duty military personnel whose move resulted from military orders;
  - Children who have been relocated due to a foster care placement in a different school zone;
  - Children who move due to a change in custody due to separation, divorce, the serious illness of a custodial parent, the death of a parent, or a court order; or
  - Students residing in the school district;
- Maintain existing academic eligibility criteria for public school choice programs; and
- Identify schools that have not reached capacity.[40]

The bill takes effect on July 1, 2016.

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:

Under CS/CS/SB 684, school district employees or contractors in violation of FHSAA recruiting bylaws will experience forfeiture of pay in the amount of $5,000 for each offense; potential suspension without pay for 12 months for a second offense; and revocation of the individual's educator certificate for a third offense.

[40] In determining the capacity of each school, the district school board shall incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and the long-term work programs required under s. 1013.35. The bill.

C. Government Sector Impact:

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The Education Practices Commission (EPC) may experience an increase in workload as a result of educator discipline cases associated with the recruiting penalties specified in the bill. Since the number of additional cases which may occur as a result of this bill is not known, the impact on the EPC is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1002.31, 1006.15, 1006.20, 1012.795, and 1012.796.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:
The committee substitute specifies that, in addition to an expulsion order, a student must not be subject to a suspension order to be guaranteed enrollment under the controlled open enrollment options.

CS by Education Pre-K – 12 on January 14, 2016:
The committee substitute modifies the bill as follows:

- Omits the authority for public schools to join the FHSAA on a per sport basis; and
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association.

B. Amendments:

None.

By the Committee on Education Pre-K - 12; and Senators Gaetz and Stargel

581-02157-16 2016684c1

A bill to be entitled

An act relating to choice in sports; amending s. 1002.20, F.S.; revising public school choice options available to students to include CAPE digital tools, CAPE industry certifications, and collegiate high school programs; authorizing parents of public school students to seek private educational choice options through the Florida Personal Learning Scholarship Accounts Program under certain circumstances; revising student eligibility requirements for participating in high school athletic competitions; authorizing public schools to provide transportation to students participating in open enrollment; amending s. 1002.31, F.S.; requiring each district school board and charter school governing board to authorize a parent to have his or her child participate in controlled open enrollment; requiring the school district to report the student for purposes of the school district's funding; authorizing a school district to provide transportation to such students; requiring that each district school board adopt and publish on its website a controlled open enrollment process; specifying criteria for the process; prohibiting a school district from delaying or preventing a student who participates in controlled open enrollment from being immediately eligible to participate in certain activities; amending s. 1006.15, F.S.; defining the term "eligible to participate"; conforming provisions to changes made by the act; prohibiting a school district from delaying or preventing a student who participates in open controlled enrollment from being

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immediately eligible to participate in certain activities; authorizing a transfer student to immediately participate in interscholastic or intrascholastic activities under certain circumstances; prohibiting a school district or the Florida High School Athletic Association (FHSAA) from declaring a transfer student ineligible under certain circumstances; amending s. 1006.20, F.S.; requiring the FHSAA to allow a private school to maintain full membership in the association or to join by sport; prohibiting the FHSAA from discouraging a private school from maintaining membership in the FHSAA and another athletic association; authorizing the FHSAA to allow a public school to apply for consideration to join another athletic association; specifying penalties for recruiting violations; requiring a school to forfeit a competition in which a student who was recruited by specified adults participated; revising circumstances under which a student may be declared ineligible; requiring student ineligibility to be established by a preponderance of the evidence; amending ss. 1012.795 and 1012.796, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (6), paragraph (a) of subsection (17), and paragraph (a) of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

subsection (22) of section 1002.20, Florida Statutes, are amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(6) EDUCATIONAL CHOICE.—

(a) *Public school choices.*—Parents of public school students may seek any ~~whatever~~ public school choice options that are applicable and available to students in their school districts. These options may include controlled open enrollment, single-gender programs, lab schools, virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, auditory-oral education programs, advanced placement, dual enrollment, International Baccalaureate, International General Certificate of Secondary Education (pre-AICE), CAPE digital tools, CAPE industry certifications, collegiate high school programs, Advanced International Certificate of Education, early admissions, credit by examination or demonstration of competency, the New World School of the Arts, the Florida School for the Deaf and the Blind, and the Florida Virtual School. These options may also include the public educational ~~school~~ choice options of the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program.

(b) *Private educational ~~school~~ choices.*—Parents of public school students may seek private educational ~~school~~ choice

options under certain programs.

1. Under the McKay Scholarships for Students with Disabilities Program, the parent of a public school student with a disability may request and receive a McKay Scholarship for the student to attend a private school in accordance with s. 1002.39.

2. Under the Florida Tax Credit Scholarship Program, the parent of a student who qualifies for free or reduced-price school lunch or who is currently placed, or during the previous state fiscal year was placed, in foster care as defined in s. 39.01 may seek a scholarship from an eligible nonprofit scholarship-funding organization in accordance with s. 1002.395.

3. Under the Florida Personal Learning Scholarship Accounts Program, the parent of a student with a qualifying disability may apply for a personal learning scholarship to be used for individual educational needs in accordance with s. 1002.385.

(17) ATHLETICS; PUBLIC HIGH SCHOOL.—

(a) *Eligibility.*—Eligibility requirements for all students participating in high school athletic competition must allow a student to be immediately eligible in the school in which he or she first enrolls each school year, the school in which the student makes himself or herself a candidate for an athletic team by engaging in practice before enrolling, or the school to which the student has transferred ~~with approval of the district school board~~, in accordance with ~~the provisions of~~ s. 1006.20(2)(a).

(22) TRANSPORTATION.—

(a) *Transportation to school.*—Public school students shall be provided transportation to school, in accordance with ~~the~~

~~provisions of~~ s. 1006.21(3)(a). Public school students may be provided transportation to school in accordance with the controlled open enrollment provisions of s. 1002.31(2).

Section 2. Section 1002.31, Florida Statutes, is amended to read:

1002.31 Controlled open enrollment; public school parental choice.—

(1) As used in this section, "controlled open enrollment" means a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.

(2)(a) As part of a school district's controlled open enrollment, and in addition to the existing public school choice programs provided in s. 1002.20(6)(a), each district school board shall allow a parent from any school district in the state whose child is not subject to a current expulsion order to enroll his or her child in and transport his or her child to any public school that has not reached capacity in the district, subject to the maximum class size pursuant to s. 1003.03 and s. 1, Art. IX of the State Constitution. The school district shall accept the student, pursuant to that school district's controlled open enrollment participation process, and report the student for purposes of the school district's funding pursuant to the Florida Education Finance Program. A school district may provide transportation to students described under this subsection at the district school board's discretion.

(b) Each charter school governing board shall allow a parent whose child is not subject to a current expulsion order to enroll his or her child in and transport his or her child to

the charter school if the school has not reached capacity, subject to the maximum class size pursuant to s. 1003.03 and s. 1, Art. IX of the State Constitution, and the enrollment limitations pursuant to s. 1002.33(10)(e)1., 2., 5., 6., and 7. A charter school may provide transportation to students described under this subsection at the discretion of the charter school's governing board.

(c) For purposes of continuity of educational choice, a student who transfers pursuant to paragraph (a) or paragraph (b) may remain at the school chosen by the parent until the student completes the highest grade level at the school ~~may offer controlled open enrollment within the public schools which is in addition to the existing choice programs such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment~~.

(3) Each district school board ~~offering controlled open enrollment~~ shall adopt by rule and post on its website the process required to participate in controlled open enrollment. The process ~~a controlled open enrollment plan which~~ must:

(a) Adhere to federal desegregation requirements.

(b) Allow ~~Include an application process required to participate in controlled open enrollment that allows~~ parents to declare school preferences, including placement of siblings within the same school.

(c) Provide a lottery procedure to determine student assignment and establish an appeals process for hardship cases.

(d) Afford parents of students in multiple session schools preferred access to controlled open enrollment.

(e) Maintain socioeconomic, demographic, and racial

balance.

(f) Address the availability of transportation.

(g) Maintain existing academic eligibility criteria for public school choice programs pursuant to s. 1002.20(6)(a).

(h) Identify schools that have not reached capacity, as determined by the school district. In determining the capacity of each school, the district school board shall incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and the long-term work programs required under s. 1013.35.

(i) Ensure that each district school board adopts a policy to provide preferential treatment to all of the following:

1. Dependent children of active duty military personnel whose move resulted from military orders.

2. Children who have been relocated due to a foster care placement in a different school zone.

3. Children who move due to a change in custody due to separation, divorce, the serious illness of a custodial parent, the death of a parent, or a court order.

4. Students residing in the school district.

(4) In accordance with the reporting requirements of s. 1011.62, each district school board shall annually report the number of students exercising public school choice, by type ~~attending the various types of public schools of choice in the district~~, in accordance with ~~including schools such as virtual instruction programs, magnet schools, and public charter schools, according to~~ rules adopted by the State Board of Education.

(5) For a school or program that is a public school of

choice under this section, the calculation for compliance with maximum class size pursuant to s. 1003.03 is the average number of students at the school level.

(6) A school district may not delay eligibility or otherwise prevent a student participating in controlled open enrollment or a choice program from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities.

Section 3. Subsection (3) and paragraph (a) of subsection (8) of section 1006.15, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

1006.15 Student standards for participation in interscholastic and intrascholastic extracurricular student activities; regulation.—

(3)(a) As used in this section and s. 1006.20, the term "eligible to participate" includes, but is not limited to, a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests. The term does not mean that a student must be placed on any specific team for interscholastic or intrascholastic extracurricular activities. To be eligible to participate in interscholastic extracurricular student activities, a student must:

1. Maintain a grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the previous semester or a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1002.3105(5) or s. 1003.4282.

2. Execute and fulfill the requirements of an academic

performance contract between the student, the district school board, the appropriate governing association, and the student's parents, if the student's cumulative grade point average falls below 2.0, or its equivalent, on a 4.0 scale in the courses required by s. 1002.3105(5) or s. 1003.4282. At a minimum, the contract must require that the student attend summer school, or its graded equivalent, between grades 9 and 10 or grades 10 and 11, as necessary.

3. Have a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 1002.3105(5) or s. 1003.4282 during his or her junior or senior year.

4. Maintain satisfactory conduct, including adherence to appropriate dress and other codes of student conduct policies described in s. 1006.07(2). If a student is convicted of, or is found to have committed, a felony or a delinquent act that would have been a felony if committed by an adult, regardless of whether adjudication is withheld, the student's participation in interscholastic extracurricular activities is contingent upon established and published district school board policy.

(b) Any student who is exempt from attending a full school day based on rules adopted by the district school board for double session schools or programs, experimental schools, or schools operating under emergency conditions must maintain the grade point average required by this section and pass each class for which he or she is enrolled.

(c) An individual home education student is eligible to participate at the public school to which the student would be assigned according to district school board attendance area

policies or which the student could ~~choose to~~ attend ~~pursuant to district or interdistrict controlled open enrollment provisions~~, or may develop an agreement to participate at a private school, in the interscholastic extracurricular activities of that school, provided the following conditions are met:

1. The home education student must meet the requirements of the home education program pursuant to s. 1002.41.

2. During the period of participation at a school, the home education student must demonstrate educational progress as required in paragraph (b) in all subjects taken in the home education program by a method of evaluation agreed upon by the parent and the school principal which may include: review of the student's work by a certified teacher chosen by the parent; grades earned through correspondence; grades earned in courses taken at a Florida College System institution, university, or trade school; standardized test scores above the 35th percentile; or any other method designated in s. 1002.41.

3. The home education student must meet the same residency requirements as other students in the school at which he or she participates.

4. The home education student must meet the same standards of acceptance, behavior, and performance as required of other students in extracurricular activities.

5. The student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A home education student must be able to participate in curricular activities if that is a requirement

for an extracurricular activity.

6. A student who transfers from a home education program to a public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a home education student until the student has successfully completed one grading period in home education pursuant to subparagraph 2. to become eligible to participate as a home education student.

(d) An individual charter school student pursuant to s. 1002.33 is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could ~~choose to~~ attend, ~~pursuant to district or interdistrict controlled open-enrollment provisions,~~ in any interscholastic extracurricular activity of that school, unless such activity is provided by the student's charter school, if the following conditions are met:

1. The charter school student must meet the requirements of the charter school education program as determined by the charter school governing board.

2. During the period of participation at a school, the charter school student must demonstrate educational progress as required in paragraph (b).

3. The charter school student must meet the same residency

requirements as other students in the school at which he or she participates.

4. The charter school student must meet the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.

5. The charter school student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A charter school student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a charter school program to a traditional public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period if the student has a successful evaluation from the previous school year, pursuant to subparagraph 2.

7. Any public school or private school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a charter school student until the student has successfully completed one grading period in a charter school pursuant to subparagraph 2. to become eligible to participate as a charter school student.

(e) A student of the Florida Virtual School full-time program may participate in any interscholastic extracurricular activity at the public school to which the student would be

assigned according to district school board attendance area policies or which the student could ~~choose to~~ attend, ~~pursuant to district or interdistrict controlled open enrollment policies,~~ if the student:

1. During the period of participation in the interscholastic extracurricular activity, meets the requirements in paragraph (a).

2. Meets any additional requirements as determined by the board of trustees of the Florida Virtual School.

3. Meets the same residency requirements as other students in the school at which he or she participates.

4. Meets the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.

5. Registers his or her intent to participate in interscholastic extracurricular activities with the school before the beginning date of the season for the activity in which he or she wishes to participate. A Florida Virtual School student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

(f) A student who transfers from the Florida Virtual School full-time program to a traditional public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period if the student has a successful evaluation from the previous school year pursuant to paragraph (a).

(g) A public school or private school student who has been unable to maintain academic eligibility for participation in

interscholastic extracurricular activities is ineligible to participate in such activities as a Florida Virtual School student until the student successfully completes one grading period in the Florida Virtual School pursuant to paragraph (a).

(h) A school district may not delay eligibility or otherwise prevent a student participating in controlled open enrollment, or a choice program, from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities.

(8)(a) The Florida High School Athletic Association (FHSAA), in cooperation with each district school board, shall facilitate a program in which a middle school or high school student who attends a private school shall be eligible to participate in an interscholastic or intrascholastic sport at a public high school, a public middle school, or a 6-12 public school that is zoned for the physical address at which the student resides if:

1. The private school in which the student is enrolled is not a member of the FHSAA ~~and does not offer an interscholastic or intrascholastic athletic program~~.

2. The private school student meets the guidelines for the conduct of the program established by the FHSAA's board of directors and the district school board. At a minimum, such guidelines shall provide:

a. A deadline for each sport by which the private school student's parents must register with the public school in writing their intent for their child to participate at that school in the sport.

b. Requirements for a private school student to

participate, including, but not limited to, meeting the same standards of eligibility, acceptance, behavior, educational progress, and performance which apply to other students participating in interscholastic or intrascholastic sports at a public school or FHSAA member private school.

(9) A student who transfers to a school during the school year may seek to immediately join an existing team if the roster for the specific interscholastic or intrascholastic extracurricular activity has not reached the activity's identified maximum size and if the coach for the activity determines that the student has the requisite skill and ability to participate. The FHSAA and school district may not declare such a student ineligible because the student did not have the opportunity to comply with qualifying requirements.

Section 4. Subsection (1) and paragraphs (a), (b), (c), and (g) of subsection (2) of section 1006.20, Florida Statutes, are amended to read:

1006.20 Athletics in public K-12 schools.—

(1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High School Athletic Association (FHSAA) is designated as the governing nonprofit organization of athletics in Florida public schools. If the FHSAA fails to meet the provisions of this section, the commissioner shall designate a nonprofit organization to govern athletics with the approval of the State Board of Education. The FHSAA is not a state agency as defined in s. 120.52. The FHSAA shall be subject to the provisions of s. 1006.19. A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA. Any high school in the state, including

charter schools, virtual schools, and home education cooperatives, may become a member of the FHSAA and participate in the activities of the FHSAA. However, membership in the FHSAA is not mandatory for any school. The FHSAA must allow a private school the option of maintaining full membership in the association or joining by sport and may not discourage a private school from simultaneously maintaining membership in another athletic association. The FHSAA may allow a public school the option to apply for consideration to join another athletic association. The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization, and may not take any retributory or discriminatory action against any of its member schools that participate in interscholastic competition with non-FHSAA member Florida schools. The FHSAA may not unreasonably withhold its approval of an application to become an affiliate member of the National Federation of State High School Associations submitted by any other organization that governs interscholastic athletic competition in this state. The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them, are governed, unless otherwise specifically provided by statute. For the purposes of this section, "high school" includes grades 6 through 12.

(2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

(a) The FHSAA shall adopt bylaws that, unless specifically provided by statute, establish eligibility requirements for all students who participate in high school athletic competition in

its member schools. The bylaws governing residence and transfer shall allow the student to be immediately eligible in the school in which he or she first enrolls each school year or the school in which the student makes himself or herself a candidate for an athletic team by engaging in a practice prior to enrolling in the school. The bylaws shall also allow the student to be immediately eligible in the school to which the student has transferred ~~during the school year if the transfer is made by a deadline established by the FHSAA, which may not be prior to the date authorized for the beginning of practice for the sport. These transfers shall be allowed pursuant to the district school board policies in the case of transfer to a public school or pursuant to the private school policies in the case of transfer to a private school~~. The student shall be eligible in that school so long as he or she remains enrolled in that school. Subsequent eligibility shall be determined and enforced through the FHSAA's bylaws. Requirements governing eligibility and transfer between member schools shall be applied similarly to public school students and private school students.

(b) The FHSAA shall adopt bylaws that specifically prohibit the recruiting of students for athletic purposes. The bylaws shall prescribe penalties and an appeals process for athletic recruiting violations.

1. If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle, in addition to the penalties in subparagraphs 2. and 3., and any other appropriate fine or ~~and~~

sanction imposed on the school, its coaches, or adult representatives who violate recruiting rules.

2. Any recruitment by a school district employee or contractor in violation of FHSAA bylaws results in escalating punishments as follows:

a. For a first offense, a $5,000 forfeiture of pay for the school district employee or contractor who committed the violation.

b. For a second offense, suspension without pay for 12 months from coaching, directing, or advertising an extracurricular activity and a $5,000 forfeiture of pay for the school district employee or contractor who committed the violation.

c. For a third offense, a $5,000 forfeiture of pay for the school district employee or contractor who committed the violation. If the individual who committed the violation holds an educator certificate, the FHSAA shall also refer the violation to the department for review pursuant to s. 1012.796 to determine whether probable cause exists, and, if there is a finding of probable cause, the commissioner shall file a formal complaint against the individual. If the complaint is upheld, the individual's educator certificate shall be revoked for 3 years, in addition to any penalties available under s. 1012.796. Additionally, the department shall revoke any adjunct teaching certificates issued pursuant to s. 1012.57 and all permissions under ss. 1012.39 and 1012.43, and the educator is ineligible for such certificates or permissions for a period of time equal to the period of revocation of his or her state-issued certificate.

3. Notwithstanding any other provision of law, a school shall forfeit every competition in which a student participated who was recruited by an adult who is not a school district employee or contractor in violation of FHSAA bylaws.

4. A student may not be declared ineligible based on violation of recruiting rules unless the student or parent has falsified any enrollment or eligibility document or accepted any benefit ~~or any promise of benefit~~ if such benefit is not generally available to the school's students or family members or is based in any way on athletic interest, potential, or performance.

(c) The FHSAA shall adopt bylaws that require all students participating in interscholastic athletic competition or who are candidates for an interscholastic athletic team to satisfactorily pass a medical evaluation each year prior to participating in interscholastic athletic competition or engaging in any practice, tryout, workout, or other physical activity associated with the student's candidacy for an interscholastic athletic team. Such medical evaluation may be administered only by a practitioner licensed under chapter 458, chapter 459, chapter 460, or s. 464.012, and in good standing with the practitioner's regulatory board. The bylaws shall establish requirements for eliciting a student's medical history and performing the medical evaluation required under this paragraph, which shall include a physical assessment of the student's physical capabilities to participate in interscholastic athletic competition as contained in a uniform preparticipation physical evaluation and history form. The evaluation form shall incorporate the recommendations of the

American Heart Association for participation cardiovascular screening and shall provide a place for the signature of the practitioner performing the evaluation with an attestation that each examination procedure listed on the form was performed by the practitioner or by someone under the direct supervision of the practitioner. The form shall also contain a place for the practitioner to indicate if a referral to another practitioner was made in lieu of completion of a certain examination procedure. The form shall provide a place for the practitioner to whom the student was referred to complete the remaining sections and attest to that portion of the examination. The preparticipation physical evaluation form shall advise students to complete a cardiovascular assessment and shall include information concerning alternative cardiovascular evaluation and diagnostic tests. Results of such medical evaluation must be provided to the school. A student is not ~~No student shall be~~ eligible to participate, as provided in s. 1006.15(3), in any interscholastic athletic competition or engage in any practice, tryout, workout, or other physical activity associated with the student's candidacy for an interscholastic athletic team until the results of the medical evaluation have been received and approved by the school.

(g) The FHSAA shall adopt bylaws establishing the process and standards by which FHSAA determinations of eligibility are made. Such bylaws shall provide that:

1. Ineligibility must be established by a preponderance of the ~~clear and convincing~~ evidence;

2. Student athletes, parents, and schools must have notice of the initiation of any investigation or other inquiry into

eligibility and may present, to the investigator and to the individual making the eligibility determination, any information or evidence that is credible, persuasive, and of a kind reasonably prudent persons rely upon in the conduct of serious affairs;

3. An investigator may not determine matters of eligibility but must submit information and evidence to the executive director or a person designated by the executive director or by the board of directors for an unbiased and objective determination of eligibility; and

4. A determination of ineligibility must be made in writing, setting forth the findings of fact and specific violation upon which the decision is based.

Section 5. Paragraph (o) is added to subsection (1) of section 1012.795, Florida Statutes, and subsection (5) of that section is amended, to read:

1012.795 Education Practices Commission; authority to discipline.—

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for up to 10 years, with reinstatement subject to

the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

(o) Has committed a third recruiting offense as determined by the Florida High School Athletic Association (FHSAA) pursuant to s. 1006.20(2)(b).

(5) Each district school superintendent and the governing authority of each university lab school, state-supported school, ~~or~~ private school, and the FHSAA shall report to the department the name of any person certified pursuant to this chapter or employed and qualified pursuant to s. 1012.39:

(a) Who has been convicted of, or who has pled nolo contendere to, a misdemeanor, felony, or any other criminal charge, other than a minor traffic infraction;

(b) Who that official has reason to believe has committed or is found to have committed any act which would be a ground for revocation or suspension under subsection (1); or

(c) Who has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.

Section 6. Subsections (3) and (7) of section 1012.796, Florida Statutes, are amended to read:

1012.796 Complaints against teachers and administrators; procedure; penalties.—

(3) The department staff shall advise the commissioner concerning the findings of the investigation and of all referrals by the Florida High School Athletic Association (FHSAA) pursuant to ss. 1006.20(2)(b) and 1012.795. The department general counsel or members of that staff shall review the investigation or the referral and advise the commissioner concerning probable cause or lack thereof. The determination of probable cause shall be made by the commissioner. The commissioner shall provide an opportunity for a conference, if requested, prior to determining probable cause. The commissioner may enter into deferred prosecution agreements in lieu of finding probable cause if, in his or her judgment, such agreements are in the best interests of the department, the certificateholder, and the public. Such deferred prosecution agreements shall become effective when filed with the clerk of the Education Practices Commission. However, a deferred prosecution agreement shall not be entered into if there is probable cause to believe that a felony or an act of moral turpitude, as defined by rule of the State Board of Education, has occurred, or for referrals by the FHSAA. Upon finding no probable cause, the commissioner shall dismiss the complaint.

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a teaching certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of

time or permanently.

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed $2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon employment or termination of employment in the state in any public or private position requiring a Florida educator's certificate.

2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

3. Pay to the commission within the first 6 months of each probation year the administrative costs of monitoring probation assessed to the educator.

4. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.

5. Satisfactorily perform his or her assigned duties in a competent, professional manner.

6. Bear all costs of complying with the terms of a final order entered by the commission.

(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

(g) Imposition of an administrative sanction, upon a person whose teaching certificate has expired, for an act or acts committed while that person possessed a teaching certificate or an expired certificate subject to late renewal, which sanction bars that person from applying for a new certificate for a period of 10 years or less, or permanently.

(h) Refer the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

The penalties imposed under this subsection are in addition to, and not in lieu of, the penalties required for a third recruiting offense pursuant to s. 1006.20(2)(b).

Section 7. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Appropriations
Education Pre-K - 12
Ethics and Elections
Health Policy
Higher Education
Rules

SENATOR DON GAETZ
1st District

Committee Request

To: Senator Tom Lee, Chair
Appropriations Committee

Subject: Committee Agenda Request

Date: January 27, 2016

I respectfully request that Senate Bill 684, Choice in Sports, be placed on the agenda for the Appropriations Committee at your convenience. Thank you for your time and consideration.

Respectfully,

Senator Don Gaetz

REPLY TO:
❒ 4300 Legendary Drive, Suite 230, Destin, FL 32541 (850) 897-5747 FAX: (888) 263-2259
❒ 420 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5001
❒ 5230 West U.S. Highway 98, Administration Building, 2nd Floor, Panama City, FL 32401 (850) 747-5856

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

January 27, 2016

The Honorable Tom Lee
Senate Appropriations Committee, Chair
418 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Lee:

I respectfully request that SB 684, related to *Choice in Sports*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Alicia Weiss/ AA
Lisa Roberts/ AA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

684
Bill Number (if applicable)

Topic Choice in Sports

Amendment Barcode (if applicable)

Name Natalie King

Job Title

Address 235 W. Brandon Blvd.
Street

Phone 813-924-8218

Brandon FL 33511
City *State* *Zip*

Email Natalie@rsaconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Sunshine State Athletic Conference

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 0684
Bill Number (if applicable)

Topic Choice in Sports

Amendment Barcode (if applicable)

Name SANDRA MALDONADO-ROSS

Job Title Teacher of Students with Special Needs

Address 6919 Compass Ct.
Street

Orlando, FL 32810
City *State* *Zip*

Phone 407-694-6481

Email sandrarossree@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

~~SB~~ SB 684
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Debbie Mortham

Job Title Legislative Director

Address 215 S Monroe St.
Street

Phone _____

TLH FL 32301
City *State* *Zip*

Email debbie@excelined.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Foundation for Florida's Future

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 684
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ron Book

Job Title _____

Address 104 W. Jefferson St
Street

TLH 32301
City *State* *Zip*

Phone 850-224-3427

Email _____

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FHSAA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations	
BILL:	PCS/CS/SB 708 (726460)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Governmental Oversight and Accountability Committee; and Senator Joyner
SUBJECT:	Arthur G. Dozier School for Boys
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	**Fav/CS**
2.	Sneed	Miller	ATD	**Recommend: Fav/CS**
3.	Sneed	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 708 authorizes the Department of State (DOS) to reimburse the next of kin or pay the provider or funeral home up to $7,500 for funeral, reinterment, and grave marker expenses for each child's remains recovered from the Arthur G. Dozier (Dozier) School for Boys by the University of South Florida (USF). The historical resources and artifacts recovered from Dozier are to remain in the custody of the USF pending release to the DOS; and any recovered human remains are to be held by the USF pending release to the next of kin or reinterment.

The bill requires the DOS to contract with the USF for identification and location of next of kin. The DOS will notify the next of kin and make arrangements for the payment or reimbursement of eligible expenses.

The bill establishes an eight-member task force to submit recommendations to the DOS by October 1, 2016 about creating and maintaining a memorial and the location of a site for the reinterment of unidentified or unclaimed remains. The task force recommendations must be submitted to the Governor and Cabinet, the President of the Senate, the Speaker of the House or Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives. The bill also provides for the repeal of the task force on December 31, 2016.

The bill also requires the DOS to submit a report by February 1, 2018 to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives on payments and expenditures required by the bill.

For Fiscal Year 2016-17, the bill appropriates $500,000 in nonrecurring funds from the General Revenue Fund to the DOS to implement the provisions of the bill. Any unused funds will revert to the General Revenue Fund and are appropriated for Fiscal Year 2017-2018 for the same purpose.

The bill takes effect upon becoming law.

II. Present Situation:

Dozier School for Boys

Dozier was a state reform school located in Marianna, Florida and operated from January 1, 1900 to June 30, 2011. Dozier was one of two training schools operated by the Department of Juvenile Justice.[1] The Department of Education administered the education program for the youths at Dozier.[2]

In 2008, Governor Charlie Christ directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at Dozier.[3] The former students had lived at Dozier during the 1950's and 1960's and alleged that students who died as a result of abuse were buried at the school cemetery.[4] FDLE identified 31 graves at Dozier but did not exhume any bodies.[5] The University of South Florida (USF) subsequently conducted research which included excavation and exhumation.[6] As of January 28, 2014, USF's work at Dozier has resulted in the discovery of 55 bodies.[7] There are no official records that account for 24 of the 55 bodies found.[8]

Prompt Payment Law

Section 215.422, F.S., governs the processing times of invoices submitted by a state agency for payment to the Chief Financial Officer (CFO) with the Department of Financial Services (DFS). Invoices submitted by agencies are required to be filed with the CFO no later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services.[9] DFS must

[1] Section 985.03(56), F.S. (2010).
[2] Section 1003.52(20), F.S. (2013).
[3] *Arthur G. Dozier School for Boys, Case Number EI-04-00005 and EI-73-8455*, Dated December 18, 2012, Office of Executive Investigations, Florida Department of Law Enforcement available at www.fdle.state.fl.us/Content/getattachment/7984bf67-8d1b-47f2-be9f-e1f9ab888874/FDLE-releases-response-regarding-Dozier-School.aspx (last visited December 19, 2015).
[4] Id. at 1.
[5] Id. at 4.
[6] Id. at 4.
[7] Ben Montgomery, *More Bodies Found Than Expected at the Dozier School for Boys*, MIAMI HERALD, Jan. 4, 2015 http://www.miamiherald.com/news/state/florida/article5427669.html (last visited December 19, 2015).
[8] University of South Florida News, *USF Researchers Find Additional Bodies at Dozier School for Boys*, http://news.usf.edu/article/templates/?a=5997 (last visited December 22, 2015).
[9] Section 215.422(1), F.S.

make prompt payment of an invoice no later than 10 days after an agency's filing of an approved invoice.[10] If a warrant in payment of an invoice is not made within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, the agency must pay the vendor interest[11] on the unpaid balance until payment is issued to the vendor.[12]

III. Effect of Proposed Changes:

This bill authorizes USF to retain custody of the following:

- Historical resources, records, archives, or artifacts recovered from Dozier until the DOS requests custody.
- Human remains exhumed from Dozier until the remains are returned to the next of kin or reburied.

The DOS is directed to contract with the USF for the university's continuing efforts to identify and locate the next of kin of the children whose remains were exhumed from Dozier.

The bill authorizes the DOS to spend up to $7,500 for the cost of each child's funeral, reinterment, and grave marker. These expenditures may take the form of reimbursements to the next of kin, or payments made directly to a funeral home or other appropriate entity. The expenditures are to be made in accordance with current prompt payment laws. Charitable contributions made toward a burial are not eligible for reimbursement. DOS is required to submit a report to the Legislature by February 1, 2018 on the status of its expenditures. The bill provides the DOS rulemaking authority to administer these provisions.

The bill establishes an eight-member task force under the DOS which is responsible for advising the department about the creation and maintenance of a memorial, and the location of a site for reinterment of unidentified or unclaimed remains. The bill designates the following task force members:

- The Secretary of State, or his or her designee, who shall serve as the chair.
- One person appointed by the President of the Florida State Conference of the National Association for the Advancement of Colored People.
- One representative of the Florida Council of Churches, appointed by the executive director of the council.
- A next of kin of a deceased ward buried at the Dozier School for Boys appointed by the Attorney General.
- One representative who promotes the welfare of people who are former wards of the Dozier School for Boys appointed by the Chief Financial Officer.
- One person appointed by the President of the Senate.
- One person appointed by the Speaker of the House of Representatives;
- One person appointed by the Jackson County Board of County Commissioners.

[10] Section 215.422(2), F.S.
[11] The CFO calculates the interest rate, which is based on the interest rates set by the Federal Reserve Bank. Sections 215.422(3)(b) and 55.03(1), F.S.
[12] Section 215.422(3)(b), F.S.

Task force recommendations must be submitted to the DOS by October 1, 2016. The task force recommendations are also required to be submitted to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives The bill repeals the task force on December 31, 2016.

The bill appropriates the nonrecurring sum of $500,000 from the General Revenue Fund for the 2016-2017 fiscal year to the DOS to implement the bill. Any unused funds will revert to the General Revenue Fund on July 1, 2017, and are appropriated for the 2017-2018 fiscal year to continue funding the provisions of the bill.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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 impact of PCS/CS/SB 708 is indeterminate. Identified next of kin shall be reimbursed for costs related to reinterment of any human remains recovered from the Dozier site.

C. Government Sector Impact:

The bill appropriates $500,000 from the General Revenue Fund for the 2016-2017 fiscal year to the DOS to implement the bill's provisions. Unexpended funds will revert to the General Revenue Fund on July 1, 2017, and will be appropriated for the same purpose in the 2017-2018 fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 11, 2016:
The committee substitute:

- Clarifies that USF will retain custody of all artifacts and human remains until such time that the remains can be returned to the next of kin or reburied or the DOS is ready to take custody of the artifacts for preservation purposes.
- Requires the USF rather than the DOS, to identify and locate the next of kin and notify the DOS.
- Requires the DOS to promptly notify the next of kin about payment provisions.
- Adds the Governor and Cabinet to the list of recipients of the February report from the DOS.
- Provides for the following task force changes:
  - Refers to the task force as the "Dozier Task Force";
  - Designates the task force members;
  - Adds additional report recipients; and
  - Adjusts its repeal date to December 31, 2016.

CS by Governmental Oversight and Accountability on January 26, 2016:

- Removes provisions requiring the DOS to perform research and develop evidence taken from Dozier.
- Removes a requirement that the DOS create a memorial and in its place creates a task force to make recommendations about the creation of a memorial and where unclaimed remains should be reinterred. The task force must produce a report by October 1, 2016.
- Removes the condition that payment be made to a funeral home only when the next of kin cannot pay for funeral and reinterment costs.
- Removes the requirement that the DOS make payment to the next of kin within 14 days and replaces that requirement with the current prompt payment law.
- Provides that charitable donations made for the funeral and burial costs will not be reimbursed or paid by the state.

- Provides that the DOS should locate the next of kin by December 31, 2017. More time was given so that the DOS would have sufficient time to locate the next of kin.
- Provides that the DOS should file a report with the Legislature on the status of payments made by February 1, 2018, so that the report will be available prior to the 2018 legislative session.
- Reduces funding to a total of $500,000 to be spent over the next two fiscal years.

B. Amendments:

None.

482384

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Joyner) recommended the following:

Senate Amendment

Between lines 143 and 144
insert:
9. One person who represents a youth development organization that promotes the welfare of at-risk youth, appointed by the Commissioner of Agriculture.

726460

576-03402-16

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Transportation, Tourism, and Economic Development)

A bill to be entitled

An act relating to the Arthur G. Dozier School for Boys; requiring certain historical resources, records, archives, artifacts, researches, medical records, and human remains to remain in the custody of the University of South Florida; providing exceptions; requiring the Department of State to contract with the university for the identification and location of eligible next of kin of certain children; requiring the department to notify the next of kin of certain payment or reimbursement provisions; requiring the department to reimburse the next of kin of children whose bodies are buried and exhumed at the Dozier School or to pay directly to a provider for the costs associated with funeral services, reinterment, and grave marker expenses; providing a process for reimbursement or payment by the department; providing that a charitable donation made toward funeral, reinterment, and grave marker expenses is not eligible for reimbursement; requiring the department to submit a report; establishing a task force to make recommendations regarding a memorial and a location of a site for the reinterment of unidentified or unclaimed remains; providing membership of the task force; requiring the task force to submit its recommendation to the department by a certain date;

726460

576-03402-16

requiring the task force to submit its recommendations to the Governor and Cabinet and to the Legislature; authorizing the department to adopt rules; providing appropriations; providing an effective date.

WHEREAS, the Arthur G. Dozier School for Boys, or the Dozier School for Boys, operated from 1900 until it was closed in 2011 after allegations of abuse were confirmed in separate investigations by the Department of Law Enforcement in 2010 and the Civil Rights Division of the United States Department of Justice in 2011, and

WHEREAS, official records indicated that 31 graves had been dug at the facility between 1914 and 1952, and

WHEREAS, a forensic investigation by the University of South Florida found that there are no records of where children who died at the Dozier School for Boys are buried and that families were often notified after the child was buried or denied access to their remains at the time of burial, and

WHEREAS, exhumations of bodies began in August 2013, and the excavations yielded 55 burial sites, 24 more sites than reported in official records, and

WHEREAS, one of the bodies exhumed during the forensic investigation was of a child reported missing since 1940, and

WHEREAS, nearly 100 deaths were recorded at the school and 51 sets of remains were exhumed from burials, and additional victims of a fatal fire in 1914 are still buried with the fire debris on site, and

WHEREAS, many families of children whose bodies have been exhumed lack the resources to properly reinter those children at

a suitable location, and

WHEREAS, the State of Florida recognizes an obligation to help the families of children formerly buried at the Dozier School for Boys reinter the bodies of those children, NOW, THEREFORE,

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

Section 1. (1)(a) Any historical resource, record, archive, artifact, public research, or medical record that was recovered from the Arthur G. Dozier School for Boys by the University of South Florida shall remain in the custody of the university for archival and preservation until the Department of State requests custody of such resource, record, archive, artifact, public research, or medical record.

(b) Any human remains exhumed from the Arthur G. Dozier School for Boys by the University of South Florida shall remain in the custody of the university for identification purposes until the remains are returned to the next of kin or reburied pursuant to this act.

(2)(a) The Department of State shall contract with the University of South Florida for the identification and location of eligible next of kin for such children and the update of information on associated artifacts and materials.

(b) No later than July 1, 2016, the University of South Florida must provide the Department of State with contact information for the next of kin for each set of human remains which has been returned to a next to kin.

(c) For any identification of next of kin occurring on or

after July 1, 2016, the University of South Florida must provide location information of the next of kin to the Department of State at least 5 days before returning the human remains to the next of kin.

(d) Beginning July 1, 2016, the Department of State must notify the next of kin responsible for a set of human remains about the payment or reimbursement provisions under subsection (3). Such notification must be made within 15 business days after the department's receipt of the location information of the next of kin.

(3) The Department of State shall reimburse the next of kin or pay directly to the provider up to $7,500 for funeral, reinterment, and grave marker expenses for each child whose body was buried at and exhumed, or otherwise recovered, from the Dozier School for Boys.

(a) In order to receive reimbursement, the next of kin must submit to the department receipts for, or documentation of, expenses. Reimbursement shall be made pursuant to s. 215.422, Florida Statutes.

(b) If expenses are to be paid directly to the provider, the funeral home or other similar entity must submit an invoice to the department for the cost of the child's funeral, reinterment, and grave marker expenses. Payment shall be made pursuant to s. 215.422, Florida Statutes.

(c) A charitable donation made toward funeral, reinterment, and grave marker expenses is not eligible for reimbursement.

(4) By February 1, 2018, the Department of State shall submit a report to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives

regarding any payments and reimbursements made pursuant to this section.

(5) The department may adopt rules necessary to administer this section.

Section 2. (1) A task force is established adjunct to the Department of State to advise the department and, except as otherwise provided in this section, shall operate consistent with s. 20.052, Florida Statutes. The task force shall be known as the "Dozier Task Force." The Department of State shall provide administrative and staff support services relating to the functions of the task force.

(2)(a) The task force shall consist of the following members:

1. The Secretary of State, or his or her designee, who shall serve as the chair.

2. One person appointed by the President of the Florida State Conference of the National Association for the Advancement of Colored People.

3. One representative of the Florida Council of Churches, appointed by the executive director of the council.

4. A next of kin of a deceased ward buried at the Dozier School for Boys appointed by the Attorney General.

5. One representative who promotes the welfare of people who are former wards of the Dozier School for Boys appointed by the Chief Financial Officer.

6. One person appointed by the President of the Senate.

7. One person appointed by the Speaker of the House of Representatives.

8. One person appointed by the Jackson County Board of

County Commissioners.

(b) By October 1, 2016, the task force shall submit its recommendations to the Department of State regarding the creation and maintenance of a memorial and the location of a site for the reinterment of unidentified or unclaimed remains. The recommendations shall also be submitted to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives.

(3) This section is repealed December 31, 2016.

Section 3. For the 2016-2017 fiscal year, the sum of $500,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of State for the purpose of implementing this act. Funds remaining unexpended or unencumbered from this appropriation as of July 1, 2017, shall revert and be reappropriated for the same purpose in the 2017-2018 fiscal year.

Section 4. This act shall take effect upon becoming a law.

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 Appropriations

BILL:	CS/CS/SB 708
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Governmental Oversight and Accountability Committee; and Senator Joyner
SUBJECT:	Arthur G. Dozier School for Boys
DATE:	February 22, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	**Fav/CS**
2.	Sneed	Miller	ATD	**Recommend: Fav/CS**
3.	Sneed	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 708 authorizes the Department of State (DOS) to reimburse the next of kin or pay the provider or funeral home up to $7,500 for funeral, reinterment, and grave marker expenses for each child's remains recovered from the Arthur G. Dozier (Dozier) School for Boys by the University of South Florida (USF). The historical resources and artifacts recovered from Dozier are to remain in the custody of the USF pending release to the DOS; and any recovered human remains are to be held by the USF pending release to the next of kin or reinterment.

The bill requires the DOS to contract with the USF for identification and location of next of kin. The DOS will notify the next of kin and make arrangements for the payment or reimbursement of eligible expenses.

The bill establishes a nine-member task force to submit recommendations to the DOS by October 1, 2016, about creating and maintaining a memorial and the location of a site for the reinterment of unidentified or unclaimed remains. The task force recommendations must be submitted to the Governor and Cabinet, the President of the Senate, the Speaker of the House or Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives. The bill also provides for the repeal of the task force on December 31, 2016.

The bill also requires the DOS to submit a report by February 1, 2018, to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives on payments and expenditures required by the bill.

For Fiscal Year 2016-2017, the bill appropriates $500,000 in nonrecurring funds from the General Revenue Fund to the DOS to implement the provisions of the bill. Any unused funds will revert to the General Revenue Fund and are appropriated for Fiscal Year 2017-2018 for the same purpose.

The bill takes effect upon becoming law.

II. Present Situation:

Dozier School for Boys

Dozier was a state reform school located in Marianna, Florida and operated from January 1, 1900 to June 30, 2011. Dozier was one of two training schools operated by the Department of Juvenile Justice.[1] The Department of Education administered the education program for the youths at Dozier.[2]

In 2008, Governor Charlie Christ directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at Dozier.[3] The former students had lived at Dozier during the 1950's and 1960's and alleged that students who died as a result of abuse were buried at the school cemetery.[4] FDLE identified 31 graves at Dozier but did not exhume any bodies.[5] The University of South Florida (USF) subsequently conducted research which included excavation and exhumation.[6] As of January 28, 2014, USF's work at Dozier has resulted in the discovery of 55 bodies.[7] There are no official records that account for 24 of the 55 bodies found.[8]

Prompt Payment Law

Section 215.422, F.S., governs the processing times of invoices submitted by a state agency for payment to the Chief Financial Officer (CFO) with the Department of Financial Services (DFS). Invoices submitted by agencies are required to be filed with the CFO no later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services.[9] DFS must

[1] Section 985.03(56), F.S. (2010).
[2] Section 1003.52(20), F.S. (2013).
[3] *Arthur G. Dozier School for Boys, Case Number EI-04-00005 and EI-73-8455*, Dated December 18, 2012, Office of Executive Investigations, Florida Department of Law Enforcement available at www.fdle.state.fl.us/Content/getattachment/7984bf67-8d1b-47f2-be9f-e1f9ab888874/FDLE-releases-response-regarding-Dozier-School.aspx (last visited December 19, 2015).
[4] Id. at 1.
[5] Id. at 4.
[6] Id. at 4.
[7] Ben Montgomery, *More Bodies Found Than Expected at the Dozier School for Boys*, MIAMI HERALD, Jan. 4, 2015 http://www.miamiherald.com/news/state/florida/article5427669.html (last visited December 19, 2015).
[8] University of South Florida News, *USF Researchers Find Additional Bodies at Dozier School for Boys*, http://news.usf.edu/article/templates/?a=5997 (last visited December 22, 2015).
[9] Section 215.422(1), F.S.

make prompt payment of an invoice no later than 10 days after an agency's filing of an approved invoice.[10] If a warrant in payment of an invoice is not made within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, the agency must pay the vendor interest[11] on the unpaid balance until payment is issued to the vendor.[12]

III. Effect of Proposed Changes:

This bill authorizes USF to retain custody of the following:

- Historical resources, records, archives, or artifacts recovered from Dozier until the DOS requests custody.
- Human remains exhumed from Dozier until the remains are returned to the next of kin or reburied.

The DOS is directed to contract with the USF for the university's continuing efforts to identify and locate the next of kin of the children whose remains were exhumed from Dozier.

The bill authorizes the DOS to spend up to $7,500 for the cost of each child's funeral, reinterment, and grave marker. These expenditures may take the form of reimbursements to the next of kin, or payments made directly to a funeral home or other appropriate entity. The expenditures are to be made in accordance with current prompt payment laws. Charitable contributions made toward a burial are not eligible for reimbursement. DOS is required to submit a report to the Legislature by February 1, 2018 on the status of its expenditures. The bill provides the DOS rulemaking authority to administer these provisions.

The bill establishes a nine-member task force under the DOS which is responsible for advising the department about the creation and maintenance of a memorial, and the location of a site for reinterment of unidentified or unclaimed remains. The bill designates the following task force members:

- The Secretary of State, or his or her designee, who shall serve as the chair.
- One person appointed by the President of the Florida State Conference of the National Association for the Advancement of Colored People.
- One representative of the Florida Council of Churches, appointed by the executive director of the council.
- A next of kin of a deceased ward buried at the Dozier School for Boys appointed by the Attorney General.
- One representative who promotes the welfare of people who are former wards of the Dozier School for Boys appointed by the Chief Financial Officer.
- One person appointed by the President of the Senate.
- One person appointed by the Speaker of the House of Representatives;
- One person appointed by the Jackson County Board of County Commissioners.
- One person who represents a youth development organization that promotes the welfare of at-risk youth, appointed by the Commission of Agriculture.

[10] Section 215.422(2), F.S.
[11] The CFO calculates the interest rate, which is based on the interest rates set by the Federal Reserve Bank. Sections 215.422(3)(b) and 55.03(1), F.S.
[12] Section 215.422(3)(b), F.S.

Task force recommendations must be submitted to the DOS by October 1, 2016. The task force recommendations are also required to be submitted to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives The bill repeals the task force on December 31, 2016.

The bill appropriates the nonrecurring sum of $500,000 from the General Revenue Fund for the 2016-2017 fiscal year to the DOS to implement the bill. Any unused funds will revert to the General Revenue Fund on July 1, 2017, and are appropriated for the 2017-2018 fiscal year to continue funding the provisions of the bill.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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 impact of CS/CS/SB 708 is indeterminate. Identified next of kin shall be reimbursed for costs related to reinterment of any human remains recovered from the Dozier site.

C. Government Sector Impact:

The bill appropriates $500,000 from the General Revenue Fund for the 2016-2017 fiscal year to the DOS to implement the bill's provisions. Unexpended funds will revert to the General Revenue Fund on July 1, 2017, and will be appropriated for the same purpose in the 2017-2018 fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:
The committee substitute:

- Clarifies that USF will retain custody of all artifacts and human remains until such time that the remains can be returned to the next of kin or reburied or the DOS is ready to take custody of the artifacts for preservation purposes.
- Requires the USF rather than the DOS, to identify and locate the next of kin and notify the DOS.
- Requires the DOS to promptly notify the next of kin about payment provisions.
- Adds the Governor and Cabinet to the list of recipients of the February report from the DOS.
- Provides for the following task force changes:
  - Refers to the task force as the "Dozier Task Force";
  - Designates the task force members;
  - Adds additional report recipients; and
  - Adjusts its repeal date to December 31, 2016.
- Adds a member to the Dozier Task Force appointed by the Commissioner of Agriculture.

CS by Governmental Oversight and Accountability on January 26, 2016:

- Removes provisions requiring the DOS to perform research and develop evidence taken from Dozier.
- Removes a requirement that the DOS create a memorial and in its place creates a task force to make recommendations about the creation of a memorial and where unclaimed remains should be reinterred. The task force must produce a report by October 1, 2016.
- Removes the condition that payment be made to a funeral home only when the next of kin cannot pay for funeral and reinterment costs.
- Removes the requirement that the DOS make payment to the next of kin within 14 days and replaces that requirement with the current prompt payment law.

- Provides that charitable donations made for the funeral and burial costs will not be reimbursed or paid by the state.
- Provides that the DOS should locate the next of kin by December 31, 2017. More time was given so that the DOS would have sufficient time to locate the next of kin.
- Provides that the DOS should file a report with the Legislature on the status of payments made by February 1, 2018, so that the report will be available prior to the 2018 legislative session.
- Reduces funding to a total of $500,000 to be spent over the next two fiscal years.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability; and Senator Joyner

585-02624A-16 2016708c1

A bill to be entitled

An act relating to the Arthur G. Dozier School for Boys; directing the Department of State to preserve historical resources, records, archives, and artifacts; directing the department to reimburse the next of kin of children whose bodies are buried and exhumed at the Dozier School or to pay directly to a provider for the costs associated with funeral services, reinterment, and grave marker expenses; providing a process for reimbursement by the department; providing that a charitable donation made toward funeral, reinterment, and grave marker expenses is not eligible for reimbursement; establishing a task force to make recommendations regarding a memorial and a location of a site for the reinterment of unidentified or unclaimed remains; providing that members of the task force shall serve without compensation but are entitled certain per diem and travel expenses; requiring the task for to submit its recommendation to the department by a certain date, at which time the task force is abolished; authorizing the department to adopt rules; providing appropriations; providing an effective date.

WHEREAS, the Arthur G. Dozier School for Boys, or the Dozier School, operated from 1900 until it was closed in 2011 after allegations of abuse were confirmed in separate investigations by the Department of Law Enforcement in 2010 and the Civil Rights Division of the United States Department of Justice in 2011, and

WHEREAS, official records indicated that 31 graves had been

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dug at the facility between 1914 and 1952, and

WHEREAS, a forensic investigation by the University of South Florida found that there are no records of where children who died at the Dozier School are buried and that a second cemetery is likely to exist, and

WHEREAS, exhumations of bodies began in August 2013, and the excavations yielded 55 burial sites, 24 more sites than reported in official records, and

WHEREAS, one of the bodies exhumed during the forensic investigation was of a child reported missing since 1940, and

WHEREAS, representatives of children formerly held at the Dozier School have estimated that there could be 100 more bodies buried on the grounds of the school, and

WHEREAS, many families of children whose bodies have been exhumed lack the resources to properly reinter those children at a suitable location, and

WHEREAS, the State of Florida recognizes an obligation to help the families of children formerly buried at the Dozier School reinter the bodies of those children, NOW, THEREFORE,

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

Section 1. (1) Any historical resource, record, archive, or artifact and any human remains that are recovered from the Arthur G. Dozier School for Boys must be transferred to the Department of State. The department shall retain and preserve such historical resources, records, archives, and artifacts.

(2) The Department of State shall reimburse the next of kin or pay directly to the provider up to $7,500 for funeral,

reinterment, and grave marker expenses for each child whose body was buried and exhumed at the Dozier School. The department shall identify and locate eligible next of kin of such children by December 31, 2017.

(a) To receive reimbursement, the next of kin must submit to the department receipts for or documentation of expenses. Reimbursement shall be made pursuant to s. 215.422.

(b) If expenses are to be paid directly to the provider, the funeral home or other similar entity shall submit an invoice to the department for the cost of the child's funeral, reinterment, and grave marker expenses. Payment shall be made pursuant to s. 215.422.

(c) A charitable donation made toward funeral, reinterment, and grave marker expenses is not eligible for reimbursement.

(3) By February 1, 2018, the Department of State shall report to the Legislature on the status of payments and reimbursements required by this act.

(4)(a) A task force, as defined in s. 20.03, is established adjunct to the Department of State to make recommendations to the department regarding the creation and maintenance of a memorial and the location of a site for the reinterment of unidentified or unclaimed remains.

(b) Task force members shall be appointed by the secretary of the Department of State and shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061.

(c) The recommendations of the task force must be submitted to the Department of State by October 1, 2016, at which time the task force is abolished.

(5) The department may adopt rules necessary to administer this section.

Section 2. For the 2016-2017 fiscal year, the sum of $500,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of State for the purpose of implementing this act. The unexpended balance of such funds shall revert immediately on July 1, 2017, and is appropriated for the 2017-2018 fiscal year for the same purpose.

Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER
Democratic Leader
19th District

February 12, 2016

Senator Tom Lee, Chair
Senate Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Lee:

This is to request that CS/CS/Senate Bill 708, Arthur G. Dozier School for Boys, be placed on the agenda for the Committee on Appropriations. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

REPLY TO:
❒ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
❒ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Appropriations

BILL:	PCS/CS/SB 800 (380416)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Higher Education Committee; and Senator Brandes
SUBJECT:	Private Postsecondary Education
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	HE	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 800 modifies requirements related to the oversight of private postsecondary education institutions operating in the state of Florida. Specifically, the bill:

- Revises the membership of the Commission for Independent Education (CIE or commission).
- Establishes provisional license requirements.
- Modifies licensure by means of accreditation requirements.
- Authorizes the assessment of fees toward the Student Protection Fund from all licensed institutions.
- Requires disclosure of all fees and costs to prospective students.
- Requires the CIE to prepare an annual accountability report by March 15 each year.
- Requires the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

According the Department of Education (DOE or department), the CIE will require two additional full-time equivalent (FTE) positions, at a recurring cost of $165,604, to handle the

increased workload associated with revising criteria for licensure and accreditation. The expenses of the CIE are funded through fees and fines imposed upon nonpublic colleges and schools and deposited into the Institutional Assessment Trust Fund. The additional budget authority for these additional FTE is not currently authorized in SB 2500, the Senate General Appropriations Bill.

The bill takes effect July 1, 2016.

II. Present Situation:

Private postsecondary educational institutions must be licensed to operate in Florida and meet specified fair consumer practices requirements.

Commission for Independent Education

The CIE, established in the DOE, is responsible for exercising all powers, duties, and functions concerning independent postsecondary educational institutions in consumer protection, program improvement, and licensure of institutions under its purview.[1] The commission is also responsible for authorizing the granting of diplomas and degrees by independent postsecondary educational institutions under its jurisdiction.[2] Independent postsecondary educational institution means "any postsecondary educational institution that operates in this state or makes application to operate in this state, and is not provided, operated, and supported by the State of Florida, its political subdivisions, or the Federal Government."[3]

The membership of the commission consists of:[4]

- Two representatives of independent colleges or universities licensed by the commission.
- Two representatives of independent, nondegree-granting schools licensed by the commission.
- One member from a public school district or Florida College System institution who is an administrator of career education.
- One representative of a religious college that is not under the jurisdiction or purview of the commission, based on meeting specified criteria in law.[5]
- One lay member who is not affiliated with an independent postsecondary educational institution.

Licensure of Institutions

The commission is responsible for developing minimum standards to evaluate institutions for licensure.[6] Current law requires that the standards must, at a minimum, include the institution's name, financial stability, purpose, administrative organization, admissions and recruitment, educational programs and curricula, retention, completion, career placement, faculty, learning

[1] Section 1005.21(1)-(2), F.S.
[2] *Id*.
[3] Section 1005.02(11), F.S.
[4] Section 1005.21(2), F.S.
[5] Section 1005.06(1)(f), F.S.
[6] Section 1005.31(2), F.S. "License" means a certificate signifying that an independent postsecondary educational institution meets standards prescribed in statute or rule and is permitted to operate in this state. Section 1005.02(13), F.S.

resources, student personnel services, physical plant and facilities, publications, and disclosure statements about the status of the institution related to professional certification and licensure.[7] A postsecondary educational institution must obtain licensure from the commission to operate in the state of Florida, unless such institution is not within the commission's jurisdiction or purview, as specified in law.[8]

Licensure by Means of Accreditation

A private postsecondary educational institution that meets the following criteria may apply for a license by means of accreditation from the commission:[9]

- The institution has operated legally in this state for at least five consecutive years.
- The institution holds institutional accreditation by an accrediting agency evaluated and approved by the commission as having standards substantially equivalent to the commission's licensure standards.
- The institution has no unresolved complaints or actions in the past 12 months.
- The institution meets minimum requirements for financial responsibility as determined by the commission.
- The institution is a Florida corporation.

An institution that is granted a license by means of accreditation must comply with the standards and requirements in law.[10] For instance, the institution must follow the commission's requirements for orderly closing, including provisions for trainout or refunds and arranging for the proper disposition of student and institutional records.[11] With the exception of submitting an annual audit report to the commission, the commission may not require institutions that are licensed by means of accreditation to submit reports that differ from the reports that such institutions submit to their accrediting association.[12]

Student Protection Fund

The CIE administers a statewide, fee-supported financial program, named the Student Protection Fund (Fund), to fund the completion of training a student who enrolls in a nonpublic school that terminates a program or ceases to operate before the student completes his or her program of study.[13] The commission is authorized to assess a fee from the schools within the CIE's jurisdiction for such purpose.[14] If a licensed school terminates a program before all students enrolled in that program complete their program of study, the commission must assess an additional fee from the school that is adequate to pay for the full cost of completing the training of such students.[15]

[7] *Id.*
[8] Sections 1005.31(1)(a) and 1005.06(1), F.S.
[9] Section 1005.32, F.S.
[10] *Id*.
[11] Section 1005.32(3), F.S.
[12] *Id*.
[13] Section 1005.37(1), F.S.
[14] Section 1005.37(2), F.S.
[15] Section 1005.37(3), F.S.

The Fund must be actuarially sound, periodically audited by the Auditor General, and reviewed to determine if additional fees must be charged to the schools.[16]

Fair Consumer Practices

A private postsecondary educational institution that is under the jurisdiction of the commission or that is exempt from the jurisdiction or purview of the commission, as authorized in law, must do the following:[17]

- Disclose to each prospective student specified information (e.g., a statement of the purpose of the institution, its educational programs and curricula, a description of its physical facilities, its status regarding licensure, and its fee schedule and policies). The institution must make the required written disclosures at least 1 week prior to enrollment or collection of any tuition from the prospective student. The disclosures may be made in the institution's current catalog.
- Use a reliable method to assess, before accepting a student into a program, the student's ability to successfully complete the course of study for which he or she has applied.
- Inform each student accurately about financial assistance and obligations for repayment of loans, describe any employment placement services provided and the limitations thereof, and refrain from misinforming the public about guaranteed placement, market availability, or salary amounts.
- Provide to prospective and enrolled students accurate program licensure information for practicing related occupations and professions in Florida.
- Ensure that all advertisements are accurate and not misleading.
- Publish and follow an equitable prorated refund policy for all students, and follow both the federal refund guidelines for students receiving federal financial assistance and the minimum refund guidelines established by commission rule.
- Follow state and federal requirements for annual reporting of crime statistics and physical plant safety, and make such reports available to the public.
- Publish and follow procedures for handling student complaints, disciplinary actions, and appeals.

Institutional Closings

Current law prescribes the requirements for lawful closure of a licensed postsecondary institution and the authority of the CIE in this process. Specifically,

- The CIE is authorized to prevent the operation of a licensed independent postsecondary educational institution by an owner who has unlawfully closed another institution.
- The CIE may assume control over student records upon closure of a licensed institution if the institution does not provide an orderly closure.
- The owners, directors, or administrators must notify the commission in writing at least 30 days prior to the closure of the institution and must organize an orderly closure of the institution. An owner, director, or administrator who fails to notify the commission at least 30 days prior to the institution's closure, or who fails to organize the orderly closure of the

[16] Section 1005.37(7), F.S.
[17] Section 1005.04(1), F.S.

institution and the train out of the students, commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- The CIE may seek civil penalties up to $10,000 from any owner, director, or administrator of an institution who knowingly destroys, abandons, or fails to convey or provide for the safekeeping of institutional and student records.
- The CIE may refer matters to the Department of Legal Affairs or the state attorney for investigation and prosecution.

Continuing Education for Administrators and Faculty

The commission is authorized to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions and require administrators and faculty to receive continuing education and training. The commission may exercise this authority over the chief administrator, director of education or training, placement director, admissions director, financial aid director, and faculty members.

III. Effect of Proposed Changes:

This bill modifies requirements related to the oversight of private postsecondary education institutions operating in the state of Florida. Specifically, the bill:
- Revises the membership of the Commission for Independent Education.
- Establishes provisional license requirements.
- Modifies licensure by means of accreditation requirements.
- Authorizes the assessment of fees toward the Student Protection Fund from all licensed institutions.
- Requires disclosure of all fees and costs to prospective students.
- Requires the CIE to prepare an annual accountability report by March 15 each year.
- Requires the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

Commission for Independent Education

The bill revises the membership of the CIE by removing from the commission's membership, the representative of a religious college and the representative from a public school district or Florida College System institution. The bill adds one member who is an employer of graduates of institutions licensed by the CIE and one member who is a graduate of an institution subject to licensure by the CIE. The bill also limits commission members to serving no more than three consecutive terms.

The bill expands the powers and duties of the commission. Specifically, the bill:
- Requires the CIE to approve its annual budget.

- Requires the CIE to appoint a committee to review any complaints from students, faculty, and others concerning institutions under its purview, not closed within 90 days.
- Authorizes the CIE to prohibit, or limit, enrollment at a licensed institution, based on the institution's performance.

Licensure of Institutions

The bill modifies the minimum standards for evaluating institutions for licensure by specifying that the standards for retention and completion include a retention and completion management plan, prescribed by the commission. A retention and management plan may assist the institutions in developing strategies to improve student retention and completion outcomes, which may benefit the students[18] attending such institutions in completing their respective programs of study and securing employment.

Provisional License

The bill authorizes the commission to require institutions that do not provide sufficient evidence of financial stability at the time of applying for a provisional license to post and maintain a surety bond with the commission. The surety bond may not exceed 50 percent of the amount of the first year's projected revenue.

The surety bond will increase the financial stability of certain new private postsecondary education institutions and assist with off-setting the burden on the Student Protection Fund if such institutions close improperly.[19] Until a new institution achieves financial stability, the surety bond will also assist with providing protection to students.[20]

As an alternative to the surety bond, the commission may allow a cash deposit escrow account or an irrevocable letter of credit payable to the commission. The amount of the cash deposit escrow account or the irrevocable letter of credit must be the same as the surety bond amount for the institution would have been.

The bill authorizes the CIE to adopt rules to implement the specified requirements for the granting of provisional license.

Licensure by Means of Accreditation

The bill changes the current requirements for licensure by means of accreditation to:

- Remove the criteria that an independent postsecondary educational institution be a Florida corporation. As a result, institutions that are non-Florida corporations will be able to use the licensure by means of accreditation process to operate in Florida.[21]

[18] *Id*.
[19] Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.
[20] *Id*.
[21] This modification supports the federal court ruling, which declared that "s. 1005.32(1)(e), Florida Statutes (2007), unconstitutionally makes licensure by means of accreditation available only to a Florida corporation." *University of Phoenix v. Nancy Bradley*, No. 08-0217 (N.D. Fla. (Dec. 23, 2008); *see also* Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

- Add a requirement for a retention and completion management plan to the reporting requirements that an independent postsecondary educational institution must submit to the commission. A plan may assist the CIE in assessing the institutions' strategies to improve student retention and completion outcomes, which may benefit the students[22] attending such institutions complete their respective programs of study and secure employment.

Application Review

The bill requires the CIE to, within 60 days after receiving an application for licensure, review the application, notify the applicant of any error or omission, and request additional information, if necessary. The specified notification deadline may help the institutions receive and address the commission's concerns in a timely manner.

Accountability for Licensed Institutions

The bill establishes accountability provisions for CIE licensed institutions. Annually, by November 30, each licensed institution must provide data to the CIE which includes, at a minimum, graduation rates, retention rates, and placement rates. The CIE must prepare an annual accountability report with this data for all licensed institutions by March 15. The commission must assess a $1,000 fine on any institution that is delinquent in reporting the required data. The commission must also establish benchmarks to recognize high-performing licensed institutions.

Student Protection Fund

The bill expands the authority of the CIE to annually determine and assess fees, to support the Student Protection Fund (Fund), from only "schools" that fall within the CIE's jurisdiction to all licensed "institutions". Currently, the definition of a school[23] does not include degree-granting independent postsecondary educational institutions.[24] By comparison, licensed institutions include both degree and non-degree granting institutions.[25] Licensed institutions also include all institutions that are licensed by the commission[26] as well as the institutions that are licensed by means of accreditation.[27] As a result of this expansion, more students will be protected by the Fund.[28] However, the bill requires that if the Fund balance exceeds $5 million on November 1 of any year, the fees may not be collected in the next calendar year.

Fair Consumer Practices

The bill modifies the fair consumer practices provisions in law by requiring each independent postsecondary educational institution to disclose to current and prospective students, in writing, all fees and costs that the students will incur to complete a program of study at the institution. This disclosure will assist students in planning ahead for completing a program of study and registering for courses each term at the institution.

[22] Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.
[23] Section 1005.02(16), F.S.
[24] Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.
[25] Telephone interview with Commission for Independent Education staff, Florida Department of Education (Jan. 12, 2016).
[26] Section 1005.31, F.S.
[27] Section 1005.32, F.S.
[28] Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

Institutional Closings

The bill requires the CIE to establish a Closed Institution Panel (panel) by October 1, 2016. The panel will consist of one commission member, one commission staff member, one accrediting body staff member, and one administrator with experience managing licensed institutions. Upon notification by the CIE, the panel must convene to implement measures to minimize the impact of the institutional closing on its students. The panel's activities will be conducted at the expense of the closing institution.

The bill also changes the charge for an owner or administrator who improperly closes an institution from a second degree misdemeanor to a first degree misdemeanor.

Continuing Education for Administrators and Faculty

The bill requires the commission to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions and require administrators and faculty to receive continuing education and training. The bill adds the chief campus officer to the list of specified positions for which the CIE is responsible for assessing qualifications and requiring continuing education and training. Beginning July 1, 2017, and annually thereafter, the CIE must verify that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

The bill takes effect July 1, 2016.

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:

PCS/CS/SB 800 authorizes the CIE to require new nonpublic postsecondary institutions that do not provide sufficient evidence of financial stability to post and maintain a surety bond, or authorized alternative, not to exceed 50 percent of the first year's projected revenues.

The bill expands the authority of the CIE to access fees to support the Student Protection Fund, which is used to assist students when a school improperly closes before completion of training of its students, to include all licensed institutions, not just non-degree granting schools. This will increase the number of students protected by the Fund. However, if the balance of this fund exceeds $5 million by November 1 of any year, the fees may not be collected the next calendar year.

C. Government Sector Impact:

According the Department of Education, the CIE will require two additional full-time equivalent (FTE) positions, at a recurring cost of $165,604, to handle the increased workload associated with revising criteria for licensure and accreditation. The expenses of the CIE are funded through fees and fines imposed upon nonpublic colleges and schools and deposited into the Institutional Assessment Trust Fund. The additional budget authority for these additional FTE is not currently authorized in SB 2500, the proposed Senate General Appropriations Bill for Fiscal Year 2016-2017.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1005.04, 1005.21, 1005.22, 1005.31, 1005.32, 1005.36, 1005.37, and 1005.39.

The bill creates section 1005.11 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Education on February 11, 2016:
The committee substitute:

- Requires the Commission for Independent Education (CIE or commission) to prepare an annual accountability report by March 15 each year.

- Requires licensed institutions to provide specified data to the CIE by November 30 each year or be subject to a $1,000 fine.
- Revises the commission membership to:
  - Remove one member from a public school district or Florida College System institution and one member from an institution not under the purview of the commission:
  - Add one member who is an employer of graduates of institutions licensed by the commission and add one member who is a graduate of an institution licensed by the commission: and
  - Prohibit CIE members from serving more than 3 consecutive terms.
- Requires a committee, appointed by the CIE, to review complaints not resolved within 90 days.
- Provides for the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Changes the criminal penalty for an owner or administrator who improperly closes an institution from a second degree misdemeanor to a first degree misdemeanor.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.
- Authorizes the commission to annually determine fees for the Student Protection Fund; however if the fund balance exceeds $5 million by November 1 of any year, the fees may not be collected the next calendar year.

CS by Higher Education on January 25, 2016:
The committee substitute modifies the written disclosure requirement in SB 800 concerning fees and costs by clarifying that such information must be provided to current and prospective students in a format prescribed by the:

- Commission for Independent Education (commission) or
- Independent Colleges and Universities of Florida for the private colleges and universities that are exempt from the jurisdiction or purview of the commission based on criteria specified in law.

B. Amendments:

None.


380416

576-03411-16

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to independent postsecondary educational institutions; amending s. 1005.04, F.S.; requiring that certain institutions include specified information relating to student fees and costs in a disclosure to prospective students; creating s. 1005.11, F.S.; requiring the Commission for Independent Education to annually prepare an accountability report by a specified date; requiring licensed institutions to annually provide certain data to the commission by a specified date and authorizing administrative fines for an institution that fails to timely submit the data; requiring placement rates to be determined using a specified methodology; requiring the commission to establish a common set of data definitions; requiring the commission to establish certain benchmarks by rule; providing for the designation of certain licensed institutions as "high performing"; amending s. 1005.21, F.S.; revising the commission's membership; limiting the terms of commission members; amending s. 1005.22, F.S.; requiring the commission to approve an annual budget; providing for the review of certain complaints concerning institutions or programs which are not closed within a specified time; authorizing the commission to prohibit the enrollment of new students, or limit the number of students in a program at, a


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licensed institution under certain circumstances; amending s. 1005.31, F.S.; revising the commission's evaluation standards for licensure of an institution; requiring certain institutions to post a surety bond or similar financial security for specified purposes; requiring the commission to adopt rules; requiring the commission to examine an application for licensure and take certain actions within a specified period; amending s. 1005.32, F.S.; deleting a provision authorizing an institution that is a Florida corporation to apply for licensure by means of accreditation; requiring institutions granted licensure through accreditation to file a retention and completion management plan; amending s. 1005.36, F.S.; revising the criminal penalty for the unlawful closure of certain institutions; requiring the commission to create a Closed Institution Panel; providing membership and duties of the panel; providing that the panel's activities be conducted at the expense of certain institutions; amending s. 1005.37, F.S.; requiring the commission to annually determine fees to support the Student Protection Fund; providing that fees may not be collected under certain circumstances; amending s. 1005.39, F.S.; requiring the commission to determine whether certain personnel of licensed institutions are qualified and require certain personnel to complete continuing education and training; requiring the commission to annually verify that certain personnel have completed certain training

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by a specified date; authorizing continuing education to be provided by licensed institutions under certain circumstances; requiring certain evidence be included in initial or renewal application forms provided by the commission; providing an effective date.

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

Section 1. Subsection (1) of section 1005.04, Florida Statutes, is amended to read:

1005.04 Fair consumer practices.—

(1) Every institution that is under the jurisdiction of the commission or is exempt from the jurisdiction or purview of the commission pursuant to s. 1005.06(1)(c) or (f) and that either directly or indirectly solicits for enrollment any student shall:

(a) Disclose to each prospective student a statement of the purpose of such institution, its educational programs and curricula, a description of its physical facilities, its status regarding licensure, its fee schedule, including all fees and costs that will be incurred by a student for completion of a program at the institution, ~~and~~ policies regarding retaining student fees if a student withdraws, and a statement regarding the transferability of credits to and from other institutions. The institution shall make the required disclosures in writing at least 1 week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog;

(b) Use a reliable method to assess, before accepting a

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student into a program, the student's ability to complete successfully the course of study for which he or she has applied;

(c) Inform each student accurately about financial assistance and obligations for repayment of loans; describe any employment placement services provided and the limitations thereof; and refrain from promising or implying guaranteed placement, market availability, or salary amounts;

(d) Provide to prospective and enrolled students accurate information regarding the relationship of its programs to state licensure requirements for practicing related occupations and professions in Florida;

(e) Ensure that all advertisements are accurate and not misleading;

(f) Publish and follow an equitable prorated refund policy for all students, and follow both the federal refund guidelines for students receiving federal financial assistance and the minimum refund guidelines set by commission rule;

(g) Follow the requirements of state and federal laws that require annual reporting with respect to crime statistics and physical plant safety and make those reports available to the public; and

(h) Publish and follow procedures for handling student complaints, disciplinary actions, and appeals.

Section 2. Section 1005.11, Florida Statutes, is created to read:

1005.11 Accountability for institutions licensed by the Commission for Independent Education.—

(1) By March 15 of each year, the commission shall prepare

an annual accountability report for licensed institutions. The report must contain, at a minimum, the graduation rates, including the number of graduates by program, retention rates, and placement rates for all licensed institutions.

(2) By November 30 of each year, each licensed institution shall provide data to the commission in a format prescribed by the commission. Placement rates shall be determined using Florida Education and Training Placement Information Program methodology. The commission shall establish a common set of data definitions that are consistent with those used by the United States Department of Education for institutional reporting purposes.

(3) The commission shall impose an administrative fine of not more than $1,000 when a licensed institution fails to timely submit the required data to the commission pursuant to this section. Administrative fines collected under this subsection shall be deposited into the Student Protection Fund.

(4) The commission shall establish by rule performance benchmarks to identify high-performing institutions licensed by the commission. Licensed institutions with graduation rates, retention rates, and placement rates equal to or higher than the average rates of all Florida universities, colleges, or career centers, as appropriate, may receive and use the designation of "high performing."

Section 3. Paragraphs (c) and (d) of subsection (2) and subsection (3) of section 1005.21, Florida Statutes, are amended to read:

1005.21 Commission for Independent Education.—

(2) The Commission for Independent Education shall consist

of seven members who are residents of this state. The commission shall function in matters concerning independent postsecondary educational institutions in consumer protection, program improvement, and licensure for institutions under its purview. The Governor shall appoint the members of the commission who are subject to confirmation by the Senate. The membership of the commission shall consist of:

(c) One member who is an employer of graduates of institutions licensed by the commission. The member may not have any other relationship with an institution subject to licensure by the commission except for his or her status as an employer of graduates of the institution ~~from a public school district or Florida College System institution who is an administrator of career education~~.

(d) One member who is a graduate of an institution subject to licensure by the commission. The member may not have any other relationship with an institution subject to licensure by the commission except for his or her status as an alumnus ~~representative of a college that meets the criteria of s. 1005.06(1)(f)~~.

(3) The members of the commission shall be appointed to 3-year terms. Members may serve no more than three consecutive terms or ~~and~~ until their successors are appointed and qualified, whichever occurs first. If a vacancy on the commission occurs before the expiration of a term, the Governor shall appoint a successor to serve the unexpired portion of the term.

Section 4. Paragraphs (e) and (k) of subsection (1) of section 1005.22, Florida Statutes, are amended, and paragraph (j) is added to subsection (2) of that section, to read:

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1005.22 Powers and duties of commission.—

(1) The commission shall:

(e) Administer the provisions of this chapter. To this end, the commission has the following administrative powers and responsibilities:

1. The commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 for the operation and establishment of independent postsecondary educational institutions. The commission shall submit the rules to the State Board of Education for approval or disapproval. If the state board does not act on a rule within 60 days after receiving it, the rule shall be filed immediately with the Department of State.

2. The commission shall approve and submit an annual budget to the State Board of Education.

3. The commission shall transmit all fees, donations, and other receipts of money to the Institutional Assessment Trust Fund.

4. The commission shall expend funds as necessary to assist in the application and enforcement of its powers and duties. The Chief Financial Officer shall pay out all moneys and funds as directed under this chapter upon vouchers approved by the Department of Education for all lawful purposes necessary to administering this chapter. The commission shall make annual reports to the State Board of Education showing in detail amounts received and all expenditures. The commission shall include in its annual report to the State Board of Education a statement of its major activities during the period covered by the report.

(k) Establish and publicize the procedures for receiving

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and responding to complaints from students, faculty, and others concerning institutions or programs under the purview of the commission, and keep records of such complaints in order to determine the frequency and nature of complaints with respect to specific institutions of higher education. Complaints not closed within 90 days shall be reviewed by a committee appointed by the commission.

(2) The commission may:

(j) Prohibit a licensed institution from enrolling new students, or limit the number of students in a program at a licensed institution, based on the institution's performance.

Section 5. Subsections (5) through (16) of section 1005.31, Florida Statutes, are renumbered as subsections (6) through (17), respectively, subsection (2) and present subsection (6) are amended, and a new subsection (5) is added to that section, to read:

1005.31 Licensure of institutions.—

(2) The commission shall develop minimum standards by which to evaluate institutions for licensure. These standards must include, at a minimum, ~~at least~~ the institution's: name, financial stability, purpose, administrative organization, admissions and recruitment, educational programs and curricula, retention and~~,~~ completion, including a retention and completion management plan, career placement, faculty, learning resources, student personnel services, physical plant and facilities, publications, and disclosure statements about the status of the institution with respect to professional certification and licensure. The commission may adopt rules to ensure that institutions licensed under this section meet these standards in

ways that are appropriate to achieve the stated intent of this chapter, including provisions for nontraditional or distance education programs and delivery.

(5) The commission may require institutions that do not provide sufficient evidence of financial stability at the time of application for a provisional license or that are dependent upon financial resources located outside of the United States to post and maintain a surety bond to assist each enrolled student in completing his or her program of enrollment in the event that the institution closes before receiving its first annual licensure renewal. In lieu of a surety bond, the commission may require an institution to establish and maintain a cash deposit escrow account or an irrevocable letter of credit payable to the commission in an amount not to exceed 50 percent of the institution's projected revenue for its first year. The commission shall adopt rules to implement this subsection.

(7) ~~(6)~~ The commission shall ensure through an investigative process that applicants for licensure meet the standards as defined in rule. Within 60 days after receipt of an application, the commission shall examine the application, notify the applicant of any apparent errors or omissions, and request any necessary additional information from the applicant. When the investigative process is not completed within the time set out in s. 120.60(1) and the commission has reason to believe that the applicant does not meet licensure standards, the commission or the executive director of the commission may issue a 90-day licensure delay, which shall be in writing and sufficient to notify the applicant of the reason for the delay. The provisions of this subsection shall control over any conflicting provisions

of s. 120.60(1).

Section 6. Paragraph (e) of subsection (1) and subsection (3) of section 1005.32, Florida Statutes, are amended to read:

1005.32 Licensure by means of accreditation.—

(1) An independent postsecondary educational institution that meets the following criteria may apply for a license by means of accreditation from the commission:

~~(e) The institution is a Florida corporation.~~

(3) The commission may not require an institution granted a license by means of accreditation to submit reports that differ from the reports required by its accrediting association, except that each institution must file with the commission an annual audit report and a retention and completion management plan pursuant to s. 1005.31. The institution must also follow the commission's requirements for orderly closing, including provisions for trainout or refunds and arranging for the proper disposition of student and institutional records.

Section 7. Subsections (3) and (4) of section 1005.36, Florida Statutes, are renumbered as subsections (4) and (5), respectively, subsection (2) is amended, and a new subsection (3) is added to that section, to read:

1005.36 Institutional closings.—

(2) At least 30 days before ~~prior to~~ closing an institution, its owners, directors, or administrators shall notify the commission in writing of the closure of the institution. The owners, directors, and administrators must organize an orderly closure of the institution, which means at least providing for the completion of training of its students. The commission must approve any such plan. An owner, director,

or administrator who fails to notify the commission at least 30 days before ~~prior to~~ the institution's closure, or who fails to organize the orderly closure of the institution and the trainout of the students, commits a misdemeanor of the first ~~second~~ degree, punishable as provided in s. 775.082 or s. 775.083.

(3) By October 1, 2016, the commission shall establish a Closed Institution Panel. The panel shall consist of at least one commission member, one commission staff member, one accrediting body staff member, and one administrator with experience managing licensed institutions. The commission shall notify the panel upon the closing of a licensed institution. For any closure that does not comply with the requirements of subsection (2), or at the discretion of the commission chair, the panel shall convene to implement measures to minimize the academic, logistical, and financial impact on students of the institution. The panel is authorized to secure student records and, to the extent possible, maintain the educational programs at the institution for at least 30 days after it receives notification that the institution is closing to assist each student with completion of his or her educational program. The panel's activities shall be conducted at the expense of the institution that is closing.

Section 8. Section 1005.37, Florida Statutes, is amended to read:

1005.37 Student Protection Fund.—

(1) The commission shall establish and administer a statewide, fee-supported financial program through which funds will be available to complete the training of a student who enrolls in a licensed institution ~~nonpublic school~~ that

terminates a program or ceases operation before the student has completed his or her program of study. The financial program is named the Student Protection Fund.

(2) The commission is authorized to assess a fee from the licensed institutions ~~schools~~ within its jurisdiction for such purpose. The commission shall assess a licensed institution ~~school~~ an additional fee for its eligibility for the Student Protection Fund. Fees to support the fund shall be determined annually by the commission; however, if the fund balance exceeds $5 million on November 1 of any year, the fees may not be collected in the next calendar year.

(3) If a licensed institution ~~school~~ terminates a program before all students complete it, the commission shall also assess that institution ~~school~~ a fee adequate to pay the full cost to the Student Protection Fund of completing the training of students.

(4) The fund shall consist entirely of fees assessed to licensed institutions ~~schools~~ and shall not be funded under any circumstances by public funds, nor shall the commission make payments or be obligated to make payments in excess of the assessments actually received from licensed institutions ~~schools~~ and deposited in the Institutional Assessment Trust Fund to the credit of the Student Protection Fund.

(5) At each commission meeting, the commission shall consider the need for and shall make required assessments, shall review the collection status of unpaid assessments and take all necessary steps to collect them, and shall review all moneys in the fund and expenses incurred since the last reporting period. This review must include administrative expenses, moneys

received, and payments made to students or to lending institutions.

(6) Staff of the commission must immediately inform the commission upon learning of the closing of a licensed institution ~~school~~ or the termination of a program that could expose the fund to liability.

(7) The Student Protection Fund must be actuarially sound, periodically audited by the Auditor General in connection with his or her audit of the Department of Education, and reviewed to determine if additional fees must be charged to licensed institutions ~~schools~~ eligible to participate in the fund.

Section 9. Subsections (1), (3), and (4) of section 1005.39, Florida Statutes, are amended to read:

1005.39 Continuing education and training for administrators and faculty.—

(1) The commission shall determine whether ~~is authorized to ensure that~~ the administrators of licensed institutions are qualified to conduct the operations of their respective positions and ~~to~~ require such administrators and faculty to receive continuing education and training as adopted by rule of the commission. The positions for which the commission must ~~may~~ review qualifications and require continuing education and training may include the positions of chief administrator or officer, chief campus officer, director of education or training, placement director, admissions director, and financial aid director and faculty members. By July 1, 2017, and annually thereafter, the commission must verify that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations specifically

pertaining to the operation of nonpublic postsecondary institutions.

(3) The commission shall adopt general qualifications for each of the respective positions and establish guidelines for the minimum amount and type of continuing education and training to be required. The continuing education and training may be provided by the commission, appropriate state or federal agencies, or professional organizations familiar with the requirements of the particular administrative positions. Continuing education may also be provided by licensed institutions upon approval of the commission. The actual curricula should be left to the discretion of those agencies, ~~and~~ organizations, and, if approved, licensed institutions.

(4) Evidence of administrator ~~the administrator's~~ and faculty ~~member's~~ compliance with the continuing education and training requirements established by the commission must ~~may~~ be included in the initial and renewal application forms provided to ~~by~~ the commission. Actual records of the continuing education and training received by administrators and faculty shall be maintained at the institution and available for inspection at all times.

Section 10. This act shall take effect July 1, 2016.

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 Appropriations

BILL:	CS/CS/SB 800
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Higher Education Committee; and Senator Brandes
SUBJECT:	Private Postsecondary Education
DATE:	February 18, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	HE	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 800 modifies requirements related to the oversight of private postsecondary education institutions operating in the state of Florida. Specifically, the bill:

- Revises the membership of the Commission for Independent Education (CIE or commission).
- Establishes provisional license requirements.
- Modifies licensure by means of accreditation requirements.
- Authorizes the assessment of fees toward the Student Protection Fund from all licensed institutions.
- Requires disclosure of all fees and costs to prospective students.
- Requires the CIE to prepare an annual accountability report by March 15 each year.
- Requires the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

According the Department of Education (DOE or department), the CIE will require two additional full-time equivalent (FTE) positions, at a recurring cost of $165,604, to handle the

increased workload associated with revising criteria for licensure and accreditation. The expenses of the CIE are funded through fees and fines imposed upon nonpublic colleges and schools and deposited into the Institutional Assessment Trust Fund. The additional budget authority for these additional FTE is not currently authorized in SB 2500, the Senate General Appropriations Bill.

The bill takes effect July 1, 2016.

II. Present Situation:

Private postsecondary educational institutions must be licensed to operate in Florida and meet specified fair consumer practices requirements.

Commission for Independent Education

The CIE, established in the DOE, is responsible for exercising all powers, duties, and functions concerning independent postsecondary educational institutions in consumer protection, program improvement, and licensure of institutions under its purview.[1] The commission is also responsible for authorizing the granting of diplomas and degrees by independent postsecondary educational institutions under its jurisdiction.[2] Independent postsecondary educational institution means "any postsecondary educational institution that operates in this state or makes application to operate in this state, and is not provided, operated, and supported by the State of Florida, its political subdivisions, or the Federal Government."[3]

The membership of the commission consists of:[4]

- Two representatives of independent colleges or universities licensed by the commission.
- Two representatives of independent, nondegree-granting schools licensed by the commission.
- One member from a public school district or Florida College System institution who is an administrator of career education.
- One representative of a religious college that is not under the jurisdiction or purview of the commission, based on meeting specified criteria in law.[5]
- One lay member who is not affiliated with an independent postsecondary educational institution.

Licensure of Institutions

The commission is responsible for developing minimum standards to evaluate institutions for licensure.[6] Current law requires that the standards must, at a minimum, include the institution's name, financial stability, purpose, administrative organization, admissions and recruitment, educational programs and curricula, retention, completion, career placement, faculty, learning

[1] Section 1005.21(1)-(2), F.S.
[2] *Id*.
[3] Section 1005.02(11), F.S.
[4] Section 1005.21(2), F.S.
[5] Section 1005.06(1)(f), F.S.
[6] Section 1005.31(2), F.S. "License" means a certificate signifying that an independent postsecondary educational institution meets standards prescribed in statute or rule and is permitted to operate in this state. Section 1005.02(13), F.S.

resources, student personnel services, physical plant and facilities, publications, and disclosure statements about the status of the institution related to professional certification and licensure.[7] A postsecondary educational institution must obtain licensure from the commission to operate in the state of Florida, unless such institution is not within the commission's jurisdiction or purview, as specified in law.[8]

Licensure by Means of Accreditation

A private postsecondary educational institution that meets the following criteria may apply for a license by means of accreditation from the commission:[9]

- The institution has operated legally in this state for at least five consecutive years.
- The institution holds institutional accreditation by an accrediting agency evaluated and approved by the commission as having standards substantially equivalent to the commission's licensure standards.
- The institution has no unresolved complaints or actions in the past 12 months.
- The institution meets minimum requirements for financial responsibility as determined by the commission.
- The institution is a Florida corporation.

An institution that is granted a license by means of accreditation must comply with the standards and requirements in law.[10] For instance, the institution must follow the commission's requirements for orderly closing, including provisions for trainout or refunds and arranging for the proper disposition of student and institutional records.[11] With the exception of submitting an annual audit report to the commission, the commission may not require institutions that are licensed by means of accreditation to submit reports that differ from the reports that such institutions submit to their accrediting association.[12]

Student Protection Fund

The CIE administers a statewide, fee-supported financial program, named the Student Protection Fund (Fund), to fund the completion of training a student who enrolls in a nonpublic school that terminates a program or ceases to operate before the student completes his or her program of study.[13] The commission is authorized to assess a fee from the schools within the CIE's jurisdiction for such purpose.[14] If a licensed school terminates a program before all students enrolled in that program complete their program of study, the commission must assess an additional fee from the school that is adequate to pay for the full cost of completing the training of such students.[15]

[7] *Id.*
[8] Sections 1005.31(1)(a) and 1005.06(1), F.S.
[9] Section 1005.32, F.S.
[10] *Id*.
[11] Section 1005.32(3), F.S.
[12] *Id*.
[13] Section 1005.37(1), F.S.
[14] Section 1005.37(2), F.S.
[15] Section 1005.37(3), F.S.

The Fund must be actuarially sound, periodically audited by the Auditor General, and reviewed to determine if additional fees must be charged to the schools.[16]

Fair Consumer Practices

A private postsecondary educational institution that is under the jurisdiction of the commission or that is exempt from the jurisdiction or purview of the commission, as authorized in law, must do the following:[17]

- Disclose to each prospective student specified information (e.g., a statement of the purpose of the institution, its educational programs and curricula, a description of its physical facilities, its status regarding licensure, and its fee schedule and policies). The institution must make the required written disclosures at least 1 week prior to enrollment or collection of any tuition from the prospective student. The disclosures may be made in the institution's current catalog.
- Use a reliable method to assess, before accepting a student into a program, the student's ability to successfully complete the course of study for which he or she has applied.
- Inform each student accurately about financial assistance and obligations for repayment of loans, describe any employment placement services provided and the limitations thereof, and refrain from misinforming the public about guaranteed placement, market availability, or salary amounts.
- Provide to prospective and enrolled students accurate program licensure information for practicing related occupations and professions in Florida.
- Ensure that all advertisements are accurate and not misleading.
- Publish and follow an equitable prorated refund policy for all students, and follow both the federal refund guidelines for students receiving federal financial assistance and the minimum refund guidelines established by commission rule.
- Follow state and federal requirements for annual reporting of crime statistics and physical plant safety, and make such reports available to the public.
- Publish and follow procedures for handling student complaints, disciplinary actions, and appeals.

Institutional Closings

Current law prescribes the requirements for lawful closure of a licensed postsecondary institution and the authority of the CIE in this process. Specifically,

- The CIE is authorized to prevent the operation of a licensed independent postsecondary educational institution by an owner who has unlawfully closed another institution.
- The CIE may assume control over student records upon closure of a licensed institution if the institution does not provide an orderly closure.
- The owners, directors, or administrators must notify the commission in writing at least 30 days prior to the closure of the institution and must organize an orderly closure of the institution. An owner, director, or administrator who fails to notify the commission at least 30 days prior to the institution's closure, or who fails to organize the orderly closure of the

[16] Section 1005.37(7), F.S.
[17] Section 1005.04(1), F.S.

institution and the train out of the students, commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.
- The CIE may seek civil penalties up to $10,000 from any owner, director, or administrator of an institution who knowingly destroys, abandons, or fails to convey or provide for the safekeeping of institutional and student records.
- The CIE may refer matters to the Department of Legal Affairs or the state attorney for investigation and prosecution.

Continuing Education for Administrators and Faculty

The commission is authorized to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions and require administrators and faculty to receive continuing education and training. The commission may exercise this authority over the chief administrator, director of education or training, placement director, admissions director, financial aid director, and faculty members.

III. Effect of Proposed Changes:

This bill modifies requirements related to the oversight of private postsecondary education institutions operating in the state of Florida. Specifically, the bill:
- Revises the membership of the Commission for Independent Education.
- Establishes provisional license requirements.
- Modifies licensure by means of accreditation requirements.
- Authorizes the assessment of fees toward the Student Protection Fund from all licensed institutions.
- Requires disclosure of all fees and costs to prospective students.
- Requires the CIE to prepare an annual accountability report by March 15 each year.
- Requires the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

Commission for Independent Education

The bill revises the membership of the CIE by removing from the commission's membership, the representative of a religious college and the representative from a public school district or Florida College System institution. The bill adds one member who is an employer of graduates of institutions licensed by the CIE and one member who is a graduate of an institution subject to licensure by the CIE. The bill also limits commission members to serving no more than three consecutive terms.

The bill expands the powers and duties of the commission. Specifically, the bill:
- Requires the CIE to approve its annual budget.

- Requires the CIE to appoint a committee to review any complaints from students, faculty, and others concerning institutions under its purview, not closed within 90 days.
- Authorizes the CIE to prohibit, or limit, enrollment at a licensed institution, based on the institution's performance.

Licensure of Institutions

The bill modifies the minimum standards for evaluating institutions for licensure by specifying that the standards for retention and completion include a retention and completion management plan, prescribed by the commission. A retention and management plan may assist the institutions in developing strategies to improve student retention and completion outcomes, which may benefit the students[18] attending such institutions in completing their respective programs of study and securing employment.

Provisional License

The bill authorizes the commission to require institutions that do not provide sufficient evidence of financial stability at the time of applying for a provisional license to post and maintain a surety bond with the commission. The surety bond may not exceed 50 percent of the amount of the first year's projected revenue.

The surety bond will increase the financial stability of certain new private postsecondary education institutions and assist with off-setting the burden on the Student Protection Fund if such institutions close improperly.[19] Until a new institution achieves financial stability, the surety bond will also assist with providing protection to students.[20]

As an alternative to the surety bond, the commission may allow a cash deposit escrow account or an irrevocable letter of credit payable to the commission. The amount of the cash deposit escrow account or the irrevocable letter of credit must be the same as the surety bond amount for the institution would have been.

The bill authorizes the CIE to adopt rules to implement the specified requirements for the granting of provisional license.

Licensure by Means of Accreditation

The bill changes the current requirements for licensure by means of accreditation to:

- Remove the criteria that an independent postsecondary educational institution be a Florida corporation. As a result, institutions that are non-Florida corporations will be able to use the licensure by means of accreditation process to operate in Florida.[21]

[18] *Id*.
[19] Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.
[20] *Id*.
[21] This modification supports the federal court ruling, which declared that "s. 1005.32(1)(e), Florida Statutes (2007), unconstitutionally makes licensure by means of accreditation available only to a Florida corporation." *University of Phoenix v. Nancy Bradley*, No. 08-0217 (N.D. Fla. (Dec. 23, 2008); *see also* Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

- Add a requirement for a retention and completion management plan to the reporting requirements that an independent postsecondary educational institution must submit to the commission. A plan may assist the CIE in assessing the institutions' strategies to improve student retention and completion outcomes, which may benefit the students[22] attending such institutions complete their respective programs of study and secure employment.

Application Review

The bill requires the CIE to, within 60 days after receiving an application for licensure, review the application, notify the applicant of any error or omission, and request additional information, if necessary. The specified notification deadline may help the institutions receive and address the commission's concerns in a timely manner.

Accountability for Licensed Institutions

The bill establishes accountability provisions for CIE licensed institutions. Annually, by November 30, each licensed institution must provide data to the CIE which includes, at a minimum, graduation rates, retention rates, and placement rates. The CIE must prepare an annual accountability report with this data for all licensed institutions by March 15. The commission must assess a $1,000 fine on any institution that is delinquent in reporting the required data. The commission must also establish benchmarks to recognize high-performing licensed institutions.

Student Protection Fund

The bill expands the authority of the CIE to annually determine and assess fees, to support the Student Protection Fund (Fund), from only "schools" that fall within the CIE's jurisdiction to all licensed "institutions". Currently, the definition of a school[23] does not include degree-granting independent postsecondary educational institutions.[24] By comparison, licensed institutions include both degree and non-degree granting institutions.[25] Licensed institutions also include all institutions that are licensed by the commission[26] as well as the institutions that are licensed by means of accreditation.[27] As a result of this expansion, more students will be protected by the Fund.[28] However, the bill requires that if the Fund balance exceeds $5 million on November 1 of any year, the fees may not be collected in the next calendar year.

Fair Consumer Practices

The bill modifies the fair consumer practices provisions in law by requiring each independent postsecondary educational institution to disclose to current and prospective students, in writing, all fees and costs that the students will incur to complete a program of study at the institution. This disclosure will assist students in planning ahead for completing a program of study and registering for courses each term at the institution.

[22] Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.
[23] Section 1005.02(16), F.S.
[24] Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.
[25] Telephone interview with Commission for Independent Education staff, Florida Department of Education (Jan. 12, 2016).
[26] Section 1005.31, F.S.
[27] Section 1005.32, F.S.
[28] Florida Department of Education, 2016 Agency Legislative Bill Analysis for SB 800 (Dec. 23, 2015), at 4.

Institutional Closings

The bill requires the CIE to establish a Closed Institution Panel (panel) by October 1, 2016. The panel will consist of one commission member, one commission staff member, one accrediting body staff member, and one administrator with experience managing licensed institutions. Upon notification by the CIE, the panel must convene to implement measures to minimize the impact of the institutional closing on its students. The panel's activities will be conducted at the expense of the closing institution.

The bill also changes the charge for an owner or administrator who improperly closes an institution from a second degree misdemeanor to a first degree misdemeanor.

Continuing Education for Administrators and Faculty

The bill requires the commission to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions and require administrators and faculty to receive continuing education and training. The bill adds the chief campus officer to the list of specified positions for which the CIE is responsible for assessing qualifications and requiring continuing education and training. Beginning July 1, 2017, and annually thereafter, the CIE must verify that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.

The bill takes effect July 1, 2016.

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:

CS/CS/SB 800 authorizes the CIE to require new nonpublic postsecondary institutions that do not provide sufficient evidence of financial stability to post and maintain a surety bond, or authorized alternative, not to exceed 50 percent of the first year's projected revenues.

The bill expands the authority of the CIE to access fees to support the Student Protection Fund, which is used to assist students when a school improperly closes before completion of training of its students, to include all licensed institutions, not just non-degree granting schools. This will increase the number of students protected by the Fund. However, if the balance of this fund exceeds $5 million by November 1 of any year, the fees may not be collected the next calendar year.

C. Government Sector Impact:

According the Department of Education, the CIE will require two additional full-time equivalent (FTE) positions, at a recurring cost of $165,604, to handle the increased workload associated with revising criteria for licensure and accreditation. The expenses of the CIE are funded through fees and fines imposed upon nonpublic colleges and schools and deposited into the Institutional Assessment Trust Fund. The additional budget authority for these additional FTE is not currently authorized in SB 2500, the proposed Senate General Appropriations Bill for Fiscal Year 2016-2017.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1005.04, 1005.21, 1005.22, 1005.31, 1005.32, 1005.36, 1005.37, and 1005.39.

The bill creates section 1005.11 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:
The committee substitute:

- Requires the Commission for Independent Education (CIE or commission) to prepare an annual accountability report by March 15 each year.

- Requires licensed institutions to provide specified data to the CIE by November 30 each year or be subject to a $1,000 fine.
- Revises the commission membership to:
  - Remove one member from a public school district or Florida College System institution and one member from an institution not under the purview of the commission:
  - Add one member who is an employer of graduates of institutions licensed by the commission and add one member who is a graduate of an institution licensed by the commission: and
  - Prohibit CIE members from serving more than 3 consecutive terms.
- Requires a committee, appointed by the CIE, to review complaints not resolved within 90 days.
- Provides for the establishment of a Closed Institution Panel by October 1, 2016, to implement measures to minimize the impact of a closed institution on its students.
- Changes the criminal penalty for an owner or administrator who improperly closes an institution from a second degree misdemeanor to a first degree misdemeanor.
- Requires the CIE to determine whether the administrators of licensed institutions are qualified to conduct the operations of their positions.
- Requires the CIE to annually verify, beginning July 1, 2017, that all administrators subject to continuing education requirements have completed training on state and federal laws and regulations pertaining to the operation of nonpublic postsecondary institutions.
- Authorizes the commission to annually determine fees for the Student Protection Fund; however if the fund balance exceeds $5 million by November 1 of any year, the fees may not be collected the next calendar year.

CS by Higher Education on January 25, 2016:
The committee substitute modifies the written disclosure requirement in SB 800 concerning fees and costs by clarifying that such information must be provided to current and prospective students in a format prescribed by the:

- Commission for Independent Education (commission) or
- Independent Colleges and Universities of Florida for the private colleges and universities that are exempt from the jurisdiction or purview of the commission based on criteria specified in law.

B. Amendments:

None.

By the Committee on Higher Education; and Senator Brandes

589-02538-16 2016800c1

A bill to be entitled

An act relating to private postsecondary education; amending s. 1005.04, F.S.; requiring certain institutions to provide a student with a written disclosure of all fees and costs that the student will incur to complete his or her program; amending s. 1005.21, F.S.; revising the membership of the Commission for Independent Education; amending s. 1005.31, F.S.; requiring the commission to include a retention and completion management plan in the minimum standards used to evaluate an institution for licensure; requiring an institution applying for a provisional license to post and maintain a surety bond with the commission; specifying the amount of the surety bond; specifying the amount of time the surety bond remains in effect; authorizing the commission to allow a cash deposit escrow account or an irrevocable letter of credit as an alternative to the surety bond; providing for rulemaking; requiring the commission to review an application and request any necessary additional information from an applicant within a certain timeframe; amending s. 1005.32, F.S.; revising the criteria for licensure by means of accreditation; deleting the requirement that an applicant be a Florida corporation; requiring an institution that applies for licensure by means of accreditation to file a retention and completion management plan with the commission; amending s. 1005.37, F.S.; revising the institutions included in the Student Protection Fund to include licensed institutions; providing an effective date.

589-02538-16 2016800c1

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

Section 1. Subsection (1) of section 1005.04, Florida Statutes, is amended to read:

1005.04 Fair consumer practices.—

(1) Every institution that is under the jurisdiction of the commission or is exempt from the jurisdiction or purview of the commission pursuant to s. 1005.06(1)(c) or (f) and that either directly or indirectly solicits for enrollment any student shall:

(a) Disclose to each prospective student a statement of the purpose of such institution, its educational programs and curricula, a description of its physical facilities, its status regarding licensure, its fee schedule and policies regarding retaining student fees if a student withdraws, and a statement regarding the transferability of credits to and from other institutions. The institution shall make the required disclosures in writing at least 1 week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution’s current catalog;

(b) Use a reliable method to assess, before accepting a student into a program, the student’s ability to complete successfully the course of study for which he or she has applied;

(c) Inform each student accurately about financial assistance and obligations for repayment of loans; describe any employment placement services provided and the limitations thereof; and refrain from promising or implying guaranteed

placement, market availability, or salary amounts;

(d) Provide to prospective and enrolled students accurate information regarding the relationship of its programs to state licensure requirements for practicing related occupations and professions in Florida;

(e) Ensure that all advertisements are accurate and not misleading;

(f) Publish and follow an equitable prorated refund policy for all students~~,~~ and follow both the federal refund guidelines for students receiving federal financial assistance and the minimum refund guidelines set by commission rule;

(g) Follow the requirements of state and federal laws that require annual reporting with respect to crime statistics and physical plant safety and make those reports available to the public; ~~and~~

(h) Publish and follow procedures for handling student complaints, disciplinary actions, and appeals; and~~.~~

(i) Before enrollment, provide to students and prospective students, in a format prescribed by the commission or by the Independent Colleges and Universities of Florida for those institutions exempt from the jurisdiction or purview of the commission under s. 1005.06(1)(c), a written disclosure of all fees and costs they will incur to complete the program.

Section 2. Paragraphs (c), (d), and (e) of subsection (2) of section 1005.21, Florida Statutes, are amended to read:

1005.21 Commission for Independent Education.—

(2) The Commission for Independent Education shall consist of seven members who are residents of this state. The commission shall function in matters concerning independent postsecondary

educational institutions in consumer protection, program improvement, and licensure for institutions under its purview. The Governor shall appoint the members of the commission who are subject to confirmation by the Senate. The membership of the commission shall consist of:

(c) Two members ~~One member~~ from a public school district or Florida College System institution who are administrators ~~is an administrator~~ of career education.

~~(d) One representative of a college that meets the criteria of s. 1005.06(1)(f).~~

(d)~~(c)~~ One lay member who is not affiliated with an independent postsecondary educational institution.

Section 3. Present subsection (2) of section 1005.31, Florida Statutes, is amended, present subsections (5) through (15) of that section are redesignated as subsections (6) through (16), respectively, a new subsection (5) is added to that section, and present subsection (6) of that section is amended, to read:

1005.31 Licensure of institutions.—

(2) The commission shall develop minimum standards ~~by which~~ to evaluate institutions for licensure. These standards must include at least the institution's name;~~,~~ financial stability;~~,~~ purpose;~~,~~ administrative organization;~~,~~ admissions and recruitment;~~,~~ educational programs and curricula;~~,~~ retention and~~,~~ completion, including a retention and completion management plan prescribed by the commission; career placement;~~,~~ faculty;~~,~~ learning resources;~~,~~ student personnel services;~~,~~ physical plant and facilities;~~,~~ publications;~~,~~ and disclosure statements about the status of the institution with respect to professional

certification and licensure. The commission may adopt rules to ensure that institutions licensed under this section meet these standards in ways that are appropriate to achieve the stated intent of this chapter, including provisions for nontraditional or distance education programs and delivery.

(5)(a) An institution applying for a provisional license shall post and maintain a surety bond with the commission in a format prescribed by the commission. The surety bond shall be executed by a surety company authorized to do business in this state, with the applicant as the principal. The surety bond shall be payable to the commission to assist the commission in aiding a student damaged by an institution ceasing operation before the student has completed his or her contracted program.

(b) The surety bond must be for at least $100,000, and may not exceed 50 percent of the amount of the first year's projected revenue.

(c) A surety bond shall remain in effect until the institution applies for and receives a first annual licensure renewal and demonstrates financial stability as determined by the commission.

(d) As an alternative to a surety bond, the commission may allow an institution to establish and maintain a cash deposit escrow account or an irrevocable letter of credit payable to the commission. The amount of the cash deposit escrow account or the irrevocable letter of credit shall be the same as the bond amount would have been for the institution.

(e) The commission may adopt rules to implement this subsection.

(7)~~(6)~~ The commission shall ensure through an investigative

process that applicants for licensure meet the standards as defined in rule. Within 60 days after receipt of an application, the commission shall examine the application, notify the applicant of any apparent error or omission, and request any necessary additional information. When the investigative process is not completed within the time set out in s. 120.60(1) and the commission has reason to believe that the applicant does not meet licensure standards, the commission or the executive director of the commission may issue a 90-day licensure delay, which shall be in writing and sufficient to notify the applicant of the reason for the delay. The provisions of this subsection shall control over any conflicting provisions of s. 120.60(1).

Section 4. Paragraph (e) of subsection (1) and subsection (3) of section 1005.32, Florida Statutes, are amended to read:

1005.32 Licensure by means of accreditation.—

(1) An independent postsecondary educational institution that meets the following criteria may apply for a license by means of accreditation from the commission:

~~(e) The institution is a Florida corporation.~~

(3) The commission may not require an institution granted a license by means of accreditation to submit reports that differ from the reports required by its accrediting association, except that each institution must file with the commission an annual audit report and a retention and completion management plan as required in s. 1005.31. The institution must also ~~and~~ follow the commission's requirements for orderly closing, including provisions for trainout or refunds and arranging for the proper disposition of student and institutional records.

Section 5. Section 1005.37, Florida Statutes, is amended to

read:

1005.37 Student Protection Fund.—

(1) The commission shall establish and administer a statewide, fee-supported financial program through which funds will be available to complete the training of a student who enrolls in a licensed institution ~~nonpublic school~~ that terminates a program or ceases operation before the student has completed his or her program of study. The financial program is named the Student Protection Fund.

(2) The commission is authorized to assess a fee from the licensed institutions ~~schools~~ within its jurisdiction for such purpose. The commission shall assess a licensed institution ~~school~~ an additional fee for its eligibility for the Student Protection Fund.

(3) If a licensed institution ~~school~~ terminates a program before all students complete it, the commission shall also assess that institution ~~school~~ a fee adequate to pay the full cost to the Student Protection Fund of completing the training of students.

(4) The fund shall consist entirely of fees assessed to licensed institutions ~~schools~~ and shall not be funded under any circumstances by public funds, nor shall the commission make payments or be obligated to make payments in excess of the assessments actually received from licensed institutions ~~schools~~ and deposited in the Institutional Assessment Trust Fund to the credit of the Student Protection Fund.

(5) At each commission meeting, the commission shall consider the need for and shall make required assessments, shall review the collection status of unpaid assessments and take all

necessary steps to collect them, and shall review all moneys in the fund and expenses incurred since the last reporting period. This review must include administrative expenses, moneys received, and payments made to students or to lending institutions.

(6) Staff of the commission must immediately inform the commission upon learning of the closing of a licensed institution ~~school~~ or the termination of a program that could expose the fund to liability.

(7) The Student Protection Fund must be actuarially sound, periodically audited by the Auditor General in connection with his or her audit of the Department of Education, and reviewed to determine if additional fees must be charged to licensed institutions ~~schools~~ eligible to participate in the fund.

Section 6. This act shall take effect July 1, 2016.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 11, 2016

I respectfully request that **Senate Bill #800**, relating to **Private Postsecondary Education**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016
Meeting Date

SB 800
Bill Number (if applicable)

380416 PCS
Amendment Barcode (if applicable)

Topic Independent Postsecondary Educational Institutions

Name Curtis Austin

Job Title Executive Director

Address 150 S. Monroe St. Suite 303
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850-894-2810

Email Curtis@FAPSC.org

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Postsecondary Schools and Colleges (FAPSC)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/14
Meeting Date

800
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Bob Harris

Job Title _____

Address 2618 Centennial Place
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 222-0720

Email bharris@lawfla.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing DeVry University; City College

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	SB 806
INTRODUCER:	Senator Legg
SUBJECT:	Instruction for Homebound and Hospitalized Students
DATE:	February 17, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.		Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Kynoch	AP	**Favorable**

I. Summary:

SB 806 obligates school districts to provide instruction to homebound or hospitalized students as part of its program of special instruction for exceptional students. More specifically, the bill requires:

- Each school district with a children's hospital located within the district, to enter into an agreement with the hospital no later than August 15, 2016, to establish a process by which the hospital will notify the district of students who may be eligible for educational instruction, and to establish timeliness for determining student eligibility and providing educational instruction.
- Each school district with a children's specialty hospital located within the district to provide educational instruction to eligible students receiving treatment in the hospital, until the district is able to enter into an agreement with the school district where the student resides.
- Each district school board, at least every three years, to submit its proposed procedures for the provision of special instruction and service for exceptional students to the Department of Education.
- State Board of Education rules to establish: criteria and procedures for determining student eligibility; appropriate methods and requirements for providing instruction for eligible students; and a standard agreement for schools districts to use when students receiving services from a children's specialty hospital transition between school districts.

The bill codifies current district practice and State Board of Education rules regulating instruction for homebound and hospitalized students. Since school districts are already meeting the minimum requirements for providing instruction to such students there is no anticipated fiscal impact.

The bill takes effect July 1, 2016.

II. Present Situation:

Homebound or Hospitalized Students

A homebound or hospitalized student is a student who "has a medically diagnosed physical or psychiatric condition which is acute or catastrophic in nature, or a chronic illness, or a repeated intermittent illness due to a persisting medical problem and which confines the student to home or hospital, and restricts activities for an extended period of time."[1]

Homebound or hospitalized students are included within the definition of an "exceptional student."[2] As such, they are entitled to all the rights and protections of the Individual with Disabilities Education Act (IEA), including a free appropriate public education.[3] Thus, homebound or hospitalized students are eligible for certain exceptional student education services.[4]

The school district in which an eligible, homebound or hospitalized student resides is responsible for providing educational services to the student even if the student is placed at a hospital in another district (e.g., a children's specialty hospital) for treatment.[5]

Eligibility for Specifically Designed Instruction

The minimal evaluation for a student to determine eligibility shall be an annual medical statement from a licensed physician, including a description of the disabling condition or diagnosis with any medical implications for instruction.[6] This report must state that the student is unable to attend school, describe the plan of treatment, provide recommendations regarding school re-entry, and give an estimated duration of condition or prognosis.[7]

A student who is homebound or hospitalized is eligible for specifically designed instruction if the following criteria are met:[8]

- A licensed physician[9] must certify that the student:

[1] Rule 6A-6.03020(1), F.A.C. A licensed physician must make the medical diagnosis. *Id*.
[2] Section 1003.01(3)(a), F.S.
[3] Florida Department of Education, Bureau of Exceptional Education and Student Services, *Policy and Procedures Manual Hospital/Homebound Program and Services (2008), available at* http://www.fldoe.org/core/fileparse.php/7590/urlt/hhppm08.pdf
[4] Section 1003.01(3)(a), F.S.; Rule 6A-6.03020, F.A.C.
[5] E-mail, Florida Department of Education (January 18, 2016); Florida Department of Education, Bureau of Exceptional Education and Student Services, *Policy and Procedures Manual Hospital/Homebound Program and Services (2008), available at* http://www.fldoe.org/core/fileparse.php/7590/urlt/hhppm08.pdf
[6] Rule 6A-6.03020(4)(a), F.A.C.
[7] *Id.* The team may require additional evaluation, which shall be provided at no cost to the parent. *Id.* A physical reexamination and medical report may be requested by the administrator of exceptional education on a more frequent basis and may be required if the student is scheduled to attend part of the school day during a recuperative period of adjustment to a full school schedule. Rule 6A-6.03020(4)(b), F.A.C. This physical reexamination and medical report shall be provided at no cost to the parent. *Id.*
[8] Rule 6A-6.03020(3), F.A.C. Procedures for determining eligibility must be in accordance with Rule 6A-6.00331, F.A.C.
[9] The physician must be licensed under chapter 458 or 459, F.S.

  - Is expected to be absent from school due to a physical or psychiatric condition for at least 15 consecutive school days, or due to a chronic condition, for at least 15 consecutive or nonconsecutive school days, which need not run consecutively;[10]
  - Is confined to home or hospital;
  - Will be able to participate in and benefit from an instructional program;
  - Is under medical care for illness or injury which is acute, catastrophic, or chronic in nature; and
  - Can receive instructional services without endangering the health and safety of the instructor or other students with whom the instructor may come in contact.
- The student is enrolled in a public school in kindergarten through 12th grade prior to the referral for homebound or hospitalized services, unless a student already meets eligibility criteria for other exceptional student education services.[11]
- The student's parent, guardian, or primary caregiver must sign an agreement concerning homebound or hospitalized policies and parental cooperation.[12]

An individual educational plan must be developed or revised for the student before he or she is assigned to a homebound or hospitalized student services program.[13]

Instructional Services

The following settings and instructional modes, or a combination thereof, are appropriate methods for providing instruction to students determined eligible for these services[14]:

- Instruction in a hospital. The hospital administrator or designee is required to provide appropriate space for the teacher and student to work and allow for the establishment of a schedule for student study between teacher visits.
- Instruction at home. The parent, guardian or primary caregiver is required to provide a quiet, clean, well-ventilated setting where a teacher and student will work; ensure that a responsible adult is present; and establish a schedule for student study between teacher visits which takes into account the student's medical condition and the requirements of the student's coursework.
- Instruction through telecommunications or computer devices. When the IEP team determines that instruction is by telecommunications or computer devices, an open, uninterrupted telecommunication link shall be provided at no additional costs to the parent, during the instructional period. The parent shall ensure that the student is prepared to actively participate in in learning.

[10] Or the equivalent on a block schedule. *Id.* No prior absence is required, and districts are encouraged to be proactive in initiating procedures to establish eligibility to avoid any interruption of the student's education. Florida Department of Education, Bureau of Exceptional Education and Student Services, *Policy and Procedures Manual Hospital/Homebound Program and Services (2008), available at* http://www.fldoe.org/core/fileparse.php/7590/urlt/hhppm08.pdf
[11] Rule 6A-6.03020(3)(b), F.A.C.
[12] Rule 6A-6.03020(3)(c), F.A.C.
[13] Rule 6A-6.03020(6), F.A.C. A student may be alternatively assigned to the homebound or hospitalized program and to a school-based program due to an acute, chronic, or intermittent condition as certified by a licensed physician. Id. This decision shall be made by the IEP team. *Id.*
[14] Rule 6A-6.03020(7), F.A.C.

Children's Specialty Hospitals

There are three children's specialty hospitals in Florida that meet the licensing criteria in Part 1 of chapter 395, Florida Statutes. The facilities are:[15]

- All Children's Hospital, in Pinellas County.
- Nicklaus Children's Hospital, in Miami-Dade County.
- Nemours Children's Specialty Care, in Orange County.

As previously mentioned, the school district in which an eligible, homebound or hospitalized student resides is responsible for providing educational services to the student even if the student is placed at a children's specialty hospital located in another school district for treatment.[16]

This placement may delay initiation of educational services for the student while the hospital, the school district in which the hospital is located, and the school district in which the student resides determine when, how and where to deliver the services.[17]

III. Effect of Proposed Changes:

This bill obligates school districts to provide instruction to homebound or hospitalized students as part of its program of special instruction for exceptional students. More specifically, the bill requires:

- Each school district with children's hospital located within the district, to enter into an agreement with the hospital no later than August 15, 2016, to establish a process by which the hospital will notify the district of students who may be eligible for educational instruction, and to establish timeliness for determining student eligibility and providing educational instruction.
- Each school district with a children's specialty hospital located within the district to provide educational instruction to eligible students receiving treatment in the hospital, until the district is able to enter into an agreement with the school district where the student resides.
- Each district school board, at least every three years, to submit its proposed procedures for the provision of special instruction and service for exceptional students to the Department of Education.
- State Board of Education rules to establish: criteria and procedures for determining student eligibility; appropriate methods and requirements for providing instruction for eligible students; and a standard agreement for schools districts to use when students receiving services from a children's specialty hospital transition between school districts.

Seamless Provision of Instructional Services

The bill requires each school district in which a children's specialty hospital[18] is located to:

- Enter into an agreement with the hospital, no later than August 15, 2016, to establish a process for the hospital to notify the school district of patients who may be eligible for instruction.

[15] E-mail, All Children's Hospital Johns Hopkins Medicine, Government and Corporate Relations (January 19, 2016).
[16] Footnote 5.
[17] E-mail, All Children's Hospital Johns Hopkins Medicine, Government and Corporate Relations (January 19, 2016).
[18] The bill requires the children's specialty hospital to be licensed under part I of chapter 395, Florida Statutes.

- Provide instruction to eligible students until the district enters into an agreement with the school district in which the student resides.

Review of School District's Special Instruction Procedures

The bill requires the district to submit its proposed procedures for the provision of special instruction and services for exceptional students to the Department of Education at least once every three years.

State Board of Education Implementation

The bill provides specific State Board of Education rulemaking authority for hospitalized and homebound students. Furthermore, the bill requires State Board of Education rules, at minimum, to address:

- Criteria for eligibility of K-12 homebound or hospitalized students for specially designed instruction.
- Procedures for determining student eligibility.
- A list of appropriate methods for providing instruction to homebound or hospitalized students.
- Requirements for initiating instructional services for a homebound or hospitalized student once the student is determined to be eligible.
- Developing a standard agreement for use by school districts to provide seamless instruction to students who transition between school districts while receiving treatment in the children's specialty hospital.

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:

None.

C. Government Sector Impact:

SB 806 codifies current district practice and State Board of Education rules regulating instruction for homebound and hospitalized students. Since school districts are already meeting the minimum requirements for providing instruction to such students there is no anticipated fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.57 of the Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Legg

17-00160-16 2016806__

A bill to be entitled

An act relating to instruction for homebound and hospitalized students; amending s. 1003.57, F.S.; requiring school districts to provide instruction to homebound or hospitalized students; requiring the State Board of Education to adopt rules related to student eligibility, methods of providing instruction to homebound or hospitalized students, and the initiation of services; requiring the department to develop a standard agreement for school districts; requiring each school district to enter into an agreement with certain hospitals within its district by a specified date; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 1003.57, Florida Statutes, is amended to read:

1003.57 Exceptional students instruction.—

(1)

(b) Each district school board shall provide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable. Each district program must~~,~~ ~~including provisions that~~:

1. ~~The district school board~~ Provide the necessary professional services for diagnosis and evaluation of exceptional students. At least once every 3 years, the district school board shall submit to the department its proposed

17-00160-16 2016806__

procedures for the provision of special instruction and services for exceptional students.

2. ~~The district school board~~ Provide the special instruction, classes, and services, either within the district school system, in cooperation with other district school systems, or through contractual arrangements with approved private schools or community facilities that meet standards established by the commissioner.

3. ~~The district school board~~ Annually provide information describing the Florida School for the Deaf and the Blind and all other programs and methods of instruction available to the parent of a sensory-impaired student.

4. Provide instruction to homebound or hospitalized students in accordance with this section and rules adopted by the state board.

a. The rules adopted by the state board must establish, at a minimum, the following:

(I) Criteria to be used in determining the eligibility of K-12 homebound or hospitalized students for specially designed instruction.

(II) Procedures for determining student eligibility.

(III) A list of appropriate methods for providing instruction to homebound or hospitalized students.

(IV) Requirements for providing instructional services for a homebound or hospitalized student once the student is determined to be eligible for such services. A school district must provide educational instruction to an eligible student who receives treatment in a children's specialty hospital that is licensed under part I of chapter 395 and that is located within

its district until the district is able to enter into an agreement with the school district where the student resides. The department shall develop a standard agreement for school districts to use in providing seamless educational instruction to a student who transitions between school districts while receiving services from a children's specialty hospital.

b. No later than August 15, 2016, each school district shall enter into an agreement with any children's specialty hospital licensed under part I of chapter 395 and that is located within its district to establish a process by which the hospital must notify the school district of students who may be eligible for instruction consistent with this subparagraph and to establish the timelines for determining student eligibility and for providing educational instruction to eligible students ~~The district school board, once every 3 years, submit to the department its proposed procedures for the provision of special instruction and services for exceptional students~~.

Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

January 28, 2016

The Honorable Tom Lee
Committee on Appropriations, Chair
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 806 - Instruction for Homebound and Hospitalized Students

Dear Chair Lee:

SB 806: Instruction for Homebound and Hospitalized Students has been referred to your committee. I respectfully request that it be placed on the Committee on Appropriations Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

John Legg
State Senator, District 17

cc: Cindy Kynoch, Staff Director
Alicia Weiss, Administrative Assistant

REPLY TO:
❒ 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
❒ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

8060
Bill Number (if applicable)

Topic Instruction for Homebound + Hospitalized Students

Amendment Barcode (if applicable)

Name Amy Maguire

Job Title Vice President, Government, Community + Corporate Relations

Address 501 6th Avenue
Street

Phone (727) 456-8413

St. Petersburg, FL 33701
City *State* *Zip*

Email amymaguire.jhmi.edu

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing All Childrens Hospital Johns Hopkins Medicine

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	SB 834
INTRODUCER:	Senator Detert
SUBJECT:	Minimum Term School Funding
DATE:	February 17, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Kynoch	AP	**Favorable**

I. Summary:

SB 834 revises minimum school term requirements and associated funding provisions for public school students and schools. Specifically, the bill:

- Provides that schools (including double-session schools and schools utilizing an experimental calendar) that operate for less than the minimum term will generate proportionally fewer full-time equivalent (FTE).
- Repeals alternative minimum term provisions for double-session schools and schools utilizing an experimental calendar.
- Repeals the requirement for the Department of Education (DOE) to approve an experimental school calendar.
- Clarifies minimum term requirement by which DOE may approve the operation of schools under emergency conditions.

The bill has no impact on state funds. A school district or charter school that continues to operate under a double session or experimental calendar for less than minimum required instructional hours specified in the bill will experience a proportional reduction in their FTE and funding as calculated through the Florida Education Finance Program.

The bill takes effect upon becoming a law.

II. Present Situation:

The present situation for the relevant portions of this bill is discussed in the Effect of Proposed Changes section of this analysis.

III. Effect of Proposed Changes:

This bill revises minimum school term requirements and associated funding provisions for students and schools. Provisions of the bill affect statutory requirements related to traditional public schools, double-session schools, schools operating on an experimental calendar, and schools operating under emergency conditions.

Traditional Public Schools

Present Situation

Each school district is required to annually operate all schools for a term of 180 actual teaching days or the equivalent on an hourly basis as specified in SBE rules.[1] The SBE has provided that the hourly equivalent to the 180-day school year is determined as prescribed below:[2]

- Grades 4 through 12: Not less than 900 net instructional hours.
- Kindergarten through grade 3 or in an authorized prekindergarten exceptional program: Not less than 720 net instructional hours.

For the purposes of the Florida Education Finance Program (FEFP), a full time equivalent student (FTE) in each program of the district is defined in terms of full-time students and part time students, as follows:[3]

- A full-time student is one student on the membership roll of one school program or a combination of school programs for the school year or the equivalent for instruction in a standard school comprising no less than the hourly equivalent prescribed by the SBE.[4]
- A part-time student is a student on the active membership roll of a school program or combination of school program who is less than a full time student. Part time students are funded based on their proportional share of hours of instruction.[5]

Effect of Proposed Changes

The bill clarifies that a part-time student generates FTE proportional to the amount of instructional hours provided by the school divided by the minimum term requirements. In effect, a student who attends a school that operates for less than the minimum term will continue to generate proportionally fewer FTE,[6] and the school will continue to receive proportionally less funding.

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[1] Section 1011.60(2), F.S.
[2] Rule 6A-1.045111(1), F.A.C.
[3] Section 1011.61(1), F.S.
[4] See the previous paragraph. Exceptions exist for double-session schools or a school utilizing an experimental calendar approved by the Department of Education (discussed further herein) and for students who moved with their parents for the purpose of engaging in the farm labor or fish industries. *Id.*
[5] E-mail, Department of Education, January 23, 2016.
[6] Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 834* (2016).

Double-Session Schools

Present Situation

Double-session schools are not defined in statute or rule.[7] Schools operating on a double-session calendar must operate for a term of 180 actual teaching days, or the hourly equivalent as prescribed below:[8]

- Grades 4 through 12: Not less than 810 net instructional hours.
- Kindergarten through grade 3: Not less than 630 net instructional hours.

For the purposes of the FEFP, students in double-sessions schools that meet the hourly equivalent are considered full-time students[9] Thus, a student in grade 9 at a double-session school who is provided 810 instructional hours generates 1.0 FTE (810/810=1.0).[10]

There are currently 13 double-session schools operating in Florida in the 2015-2016 fiscal year.[11] Several charter schools are operating with double-session or multiple sessions for which 810 instructional hours are provided.[12]

Effect of Proposed Changes

The bill eliminates the ability for a student at a double-session school to meet the definition of a full-time student if the student receives instruction that comprises:

- Less than 900 but more than 810 net hours in grades 4 through 12, or
- Less than 720 but more than 630 net hours in kindergarten through grade 3.

In effect, instead of generating 1.0 FTE while operating for less than 900 hours but for more than 810 hours, the school will generate FTE proportional to the amount of instructional hours divided by the minimum term requirement of 900 hours.[13] Under the bill, a student receiving 810 instructional hours would now generate 0.9 FTE (810/900=0.9),[14] and the school would receive proportionally less funding.

[7] Differing interpretations of "double-session schools" may exist. *Compare,* a DOE statement that in Florida, double-session schools have historically existed in instances where districts held two sessions per day at one school location due to school construction delay or storm damage. *Id.; But see,* Statutory maximum class size implementation options direct district school boards to consider operating more than one session of school during the day in order to meet constitutional class size requirements. Section 1003.03(3)(i), F.S.
[8] Section 1011.61(1)(a)2., F.S.; Rule 6A-1.045111(2), F.A.C. The DOE is not required to approve double-session schools. Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 834* (2016).
[9] Section 1011.61(1)(a)2., F.S.
[10] Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 834* (2016).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

Schools Operating on an Experimental Calendar

Present Situation

Schools utilizing an experimental calendar that is approved by the Department of Education, must operate for a term of 180 actual teaching days or the hourly equivalent as prescribed below:[15]

- Grades 4 through 12: Not less than 810 net instructional hours.
- Kindergarten through grade 3: Not less than 630 net instructional hours.

For the purposes of the FEFP, students at a school utilizing an experimental school calendar approved by the Department of Education are considered full-time students if the instruction meets the minimum term requirements.[16] Thus, a student in grade 9 at such a school who is provided 810 instructional hours generates 1.0 FTE (810/810=1.0).[17]

Additionally, the Department is required to determine and implement an equitable method of equivalent funding for experimental schools which have been approved by the DOE to operate for less than the minimum school day.[18]

Effect of Proposed Changes

The bill eliminates the ability for a student at a school utilizing an experimental school calendar to meet the definition of a full-time student if the student receives instruction that comprises:

- Less than 900 but more than 810 net hours in grades 4 through 12, or
- Less than 720 but more than 630 net hours in kindergarten through grade 3.

The bill eliminates statutory language requiring the DOE to determine and implement an equitable method of equivalent funding for experimental schools which have been approved by the DOE to operate for less than the minimum school day.[19]

In effect, a student who attends a school operating on an experimental calendar that operates for less than the minimum term will generate proportionally fewer FTE.[20] Thus, instead of generating 1.0 FTE while operating for less than 900 hours but for more than 810 hours, the school will generate FTE proportional to the amount of instructional hours divided by the minimum term requirement of 900 hours.[21] Under the bill, a student receiving 810 instructional hours would now generate 0.9 FTE (810/900=0.9),[22] and the school would receive proportionally less funding.

[15] Section 1011.61(1)(a)2., F.S.; Rule 6A-1.045111(2), F.A.C.
[16] Section 1011.61(1)(a)2., F.S.
[17] Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 834* (2016).
[18] Section 1011.61(1), F.S. (Flush left provisions)
[19] Section 1011.61(1), F.S. (Flush left provisions)
[20] Staff of the Florida Department of Education, *Legislative Bill Analysis for SB 834* (2016).
[21] *Id.*
[22] *Id.*

Emergency Conditions

Present Situation

Upon written application, the SBE is authorized to alter the 180 day minimum term requirement during a national, state, or local emergency if the SBE determines that is not feasible to make up lost days or hours.[23]

At the discretion of the Commissioner of Education, and if the SBE determines that the reduction of school days or hours is caused by the existence of a bona fide emergency, the apportionment may be reduced for such district or districts in proportion to the decrease in the length of term in any such school or schools.[24]

The Department is required to determine and implement an equitable method of equivalent funding for schools operating under emergency conditions, which have been approved by the DOE to operate for less than the minimum school day.[25]

Effect of Proposed Changes

The bill clarifies schools approved by the DOE to operate for less than the minimum school day means the minimum term as provided in s. 1011.60, F.S.[26]

The bill takes effect upon becoming a law.

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.

[23] Section 1011.60(2), F.S. The SBE is authorized to prescribe procedures for altering this requirement. *Id.*
[24] Section 1011.60(2), F.S. A strike, as defined in s. 447.203(6), by employees of the school district may not be considered an emergency. *Id.*
[25] Section 1011.61(1), F.S. (Flush left provisions)
[26] Section 1011.61(1), F.S. (Flush left provisions) This section identifies minimum requirements of the FEFP. *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 834 has no impact on state funds. A school district or charter school that continues to operate under a double session or experimental calendar for less than minimum required instructional hours specified in the bill will experience a proportional reduction in their FTE and funding as calculated through the Florida Education Finance Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1011.61 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Detert

28-00640-16 2016834__

A bill to be entitled

An act relating to minimum term school funding; amending s. 1011.61, F.S.; revising the term "full-time student" to delete references to membership in a double-session school or a school that uses a specified experimental calendar; clarifying how "full time equivalency" is calculated for students in schools that operate for less than the minimum term; providing an effective date.

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

Section 1. Subsection (1) of section 1011.61, Florida Statutes, is amended to read:

1011.61 Definitions.—Notwithstanding the provisions of s. 1000.21, the following terms are defined as follows for the purposes of the Florida Education Finance Program:

(1) A "full-time equivalent student" in each program of the district is defined in terms of full-time students and part-time students as follows:

(a) A "full-time student" is one student on the membership roll of one school program or a combination of school programs listed in s. 1011.62(1)(c) for the school year or the equivalent for:

1. Instruction in a standard school, comprising not less than 900 net hours for a student in or at the grade level of 4 through 12, or not less than 720 net hours for a student in or at the grade level of kindergarten through grade 3 or in an authorized prekindergarten exceptional program; or

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~~2. Instruction in a double-session school or a school utilizing an experimental school calendar approved by the Department of Education, comprising not less than the equivalent of 810 net hours in grades 4 through 12 or not less than 630 net hours in kindergarten through grade 3; or~~

2.~~3.~~ Instruction comprising the appropriate number of net hours set forth in subparagraph 1. ~~or subparagraph 2.~~ for students who, within the past year, have moved with their parents for the purpose of engaging in the farm labor or fish industries, if a plan furnishing such an extended school day or week, or a combination thereof, has been approved by the commissioner. Such plan may be approved to accommodate the needs of migrant students only or may serve all students in schools having a high percentage of migrant students. The plan described in this subparagraph is optional for any school district and is not mandated by the state.

(b) A "part-time student" is a student on the active membership roll of a school program or combination of school programs listed in s. 1011.62(1)(c) who is less than a full-time student. A student who receives instruction in a school that operates for less than the minimum term shall generate a full-time equivalent student proportional to the amount of instructional hours provided by the school divided by the minimum term requirement as defined in s. 1011.60.

(c)1. A "full-time equivalent student" is:

a. A full-time student in any one of the programs listed in s. 1011.62(1)(c); or

b. A combination of full-time or part-time students in any one of the programs listed in s. 1011.62(1)(c) which is the

equivalent of one full-time student based on the following calculations:

(I) A full-time student in a combination of programs listed in s. 1011.62(1)(c) shall be a fraction of a full-time equivalent membership in each special program equal to the number of net hours per school year for which he or she is a member, divided by the appropriate number of hours set forth in subparagraph (a)1. ~~or subparagraph (a)2.~~ The difference between that fraction or sum of fractions and the maximum value as set forth in subsection (4) for each full-time student is presumed to be the balance of the student's time not spent in a special program and shall be recorded as time in the appropriate basic program.

(II) A prekindergarten student with a disability shall meet the requirements specified for kindergarten students.

(III) A full-time equivalent student for students in kindergarten through grade 12 in a full-time virtual instruction program under s. 1002.45 or a virtual charter school under s. 1002.33 shall consist of six full-credit completions or the prescribed level of content that counts toward promotion to the next grade in programs listed in s. 1011.62(1)(c). Credit completions may be a combination of full-credit courses or half-credit courses. Beginning in the 2016-2017 fiscal year, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment under s. 1003.4282 to earn a standard high school diploma shall be adjusted if the student does not pass the end-of-course assessment. However, no adjustment shall be made for a student who enrolls in a segmented remedial course

delivered online.

(IV) A full-time equivalent student for students in kindergarten through grade 12 in a part-time virtual instruction program under s. 1002.45 shall consist of six full-credit completions in programs listed in s. 1011.62(1)(c)1. and 3. Credit completions may be a combination of full-credit courses or half-credit courses. Beginning in the 2016-2017 fiscal year, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment under s. 1003.4282 to earn a standard high school diploma shall be adjusted if the student does not pass the end-of-course assessment. However, no adjustment shall be made for a student who enrolls in a segmented remedial course delivered online.

(V) A Florida Virtual School full-time equivalent student shall consist of six full-credit completions or the prescribed level of content that counts toward promotion to the next grade in the programs listed in s. 1011.62(1)(c)1. and 3. for students participating in kindergarten through grade 12 part-time virtual instruction and the programs listed in s. 1011.62(1)(c) for students participating in kindergarten through grade 12 full-time virtual instruction. Credit completions may be a combination of full-credit courses or half-credit courses. Beginning in the 2016-2017 fiscal year, the reported full-time equivalent students and associated funding of students enrolled in courses requiring passage of an end-of-course assessment under s. 1003.4282 to earn a standard high school diploma shall be adjusted if the student does not pass the end-of-course assessment. However, no adjustment shall be made for a student

who enrolls in a segmented remedial course delivered online.

(VI) Each successfully completed full-credit course earned through an online course delivered by a district other than the one in which the student resides shall be calculated as 1/6 FTE.

(VII) A full-time equivalent student for courses requiring passage of a statewide, standardized end-of-course assessment under s. 1003.4282 to earn a standard high school diploma shall be defined and reported based on the number of instructional hours as provided in this subsection until the 2016-2017 fiscal year. Beginning in the 2016-2017 fiscal year, the FTE for the course shall be assessment-based and shall be equal to 1/6 FTE. The reported FTE shall be adjusted if the student does not pass the end-of-course assessment. However, no adjustment shall be made for a student who enrolls in a segmented remedial course delivered online.

(VIII) For students enrolled in a school district as a full-time student, the district may report 1/6 FTE for each student who passes a statewide, standardized end-of-course assessment without being enrolled in the corresponding course.

2. A student in membership in a program scheduled for more or less than 180 school days or the equivalent on an hourly basis as specified by rules of the State Board of Education is a fraction of a full-time equivalent membership equal to the number of instructional hours in membership divided by the appropriate number of hours set forth in subparagraph (a)1.; however, for the purposes of this subparagraph, membership in programs scheduled for more than 180 days is limited to students enrolled in:

a. Juvenile justice education programs.

b. The Florida Virtual School.

c. Virtual instruction programs and virtual charter schools for the purpose of course completion and credit recovery pursuant to ss. 1002.45 and 1003.498. Course completion applies only to a student who is reported during the second or third membership surveys and who does not complete a virtual education course by the end of the regular school year. The course must be completed no later than the deadline for amending the final student enrollment survey for that year. Credit recovery applies only to a student who has unsuccessfully completed a traditional or virtual education course during the regular school year and must re-take the course in order to be eligible to graduate with the student's class.

The full-time equivalent student enrollment calculated under this subsection is subject to the requirements in subsection (4).

The department shall determine and implement an equitable method of equivalent funding for ~~experimental schools and for~~ schools operating under emergency conditions, which schools have been approved by the department to operate for less than the minimum term requirement as provided in s. 1011.60 ~~school day~~.

Section 2. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 11, 2016

I respectfully request that **Senate Bill #834**, relating to Minimum Term School Funding, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/18/2016
Meeting Date

SB 834
Bill Number (if applicable)

Topic SB 834: Minimum Term School Funding

Amendment Barcode (if applicable)

Name Tanya Cooper

Job Title Director, Governmental Relations

Address 325 W. Gaines St.
Street

Phone 850-245-0507

Tallahassee | Fl | 32399
City | *State* | *Zip*

Email Tanya.Cooper@fldoe.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Department of Education

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 0834
Bill Number (if applicable)

Topic Minimum Term School Funding

Amendment Barcode (if applicable)

Name SANDRA MALDONADO-ROSS

Job Title Teacher of Students with Special Needs

Address 6919 Compass Ct.
Street

Phone 407-694-6481

Orlando, FL 32810
City *State* *Zip*

Email Sandrarossrec@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	CS/CS/SB 894
INTRODUCER:	Education Pre-K - 12 Committee and Senator Detert
SUBJECT:	Education Personnel
DATE:	February 22, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Scott	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 894 modifies and expands several statutory provisions relating to education personnel.

Specifically, the bill:

- Adds Department of Education (DOE) employees and agents, who investigate or prosecute educator misconduct, to the list of individuals authorized to access records relating to child abuse, abandonment, or neglect.
- Authorizes the DOE to use information from the Central Abuse Hotline for educator certification discipline and review.
- Authorizes the Commissioner of Education to issue a letter of guidance to an educator in lieu of finding probable cause to prosecute misconduct.
- Modifies the membership of the Education Practices Commission.
- Prohibits postsecondary education institutions and school districts from requiring students participating in a clinical field experience to purchase liability insurance.
- Authorizes DOE to sponsor an educator job fair.
- Requires DOE to coordinate a best practices community to assist school districts with teacher recruitment and other human resource functions.
- Removes State Board of Education rulemaking authority regarding school district assignment of newly hired instructional personnel.
- Establishes in law state approval of school leader preparation programs.

The bill has no impact on state funds.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

The present situation for the relevant portions of this bill is discussed in the Effect of Proposed Changes section of this analysis.

III. Effect of Proposed Changes:

This bill modifies and expands several statutory provisions relating to education personnel.

Educator Misconduct

Present Situation

Florida law requires that each person[1] in a position who provides direct instruction to students meet the state's educator certification requirements and criteria. The Office of Professional Practices Services[2] (PPS) within the Department of Education (DOE) investigates misconduct by educators who hold a Florida Educator Certificate or a valid application for a Florida Educator Certificate.[3]

The DOE is required to investigate legally sufficient[4] complaints of misconduct[5] committed by certified educators and advise the Commissioner of Education (Commissioner) on whether probable cause exists.[6] Upon a finding of probable cause, the Commissioner must file a formal

[1] Such persons include instructional personnel (*e.g.*, classroom teachers, student advisors, or certified school counselors) or administrative personnel (*e.g.*, deputy superintendents, school principals, or assistance principals). Section 1012.01(2)-(3), F.S.
[2] Florida Department of Education, Professional Practices, http://www.fldoe.org/teaching/professional-practices (last visited January 14, 2016).
[3] Florida Department of Education, Role of Professional Practices Services, http://www.fldoe.org/teaching/professional-practices/role-of-professional-practices-service.stml (last visited January 13, 2016).
[4] Section 1012.796(1)(a), F.S. The complaint is legally sufficient if it contains ultimate facts showing a violation has occurred. *Id.* and s. 1012.795, F.S.
[5] Misconduct may include fraudulently obtaining an educator certificate, knowingly failing to report actual or suspected child abuse, or breach of contract. Section 1012.795(1), F.S.
[6] Section 1012.796(3), F.S.

complaint and prosecute the complaint pursuant to chapter 120, F.S.[7] If the Commissioner does not find probable cause, the complaint must be dismissed.[8]

Currently, the PPS is not legally authorized to access records relating to cases of child abuse, abandonment, or neglect involving a certified educator.[9] Records held by the Department of Children and Families (DCF) regarding reports of child abuse, abandonment, or neglect, including reports made to the statewide Central Abuse Hotline, are confidential and exempt from public records requirements, unless specifically authorized in law.[10]

Access to records, excluding the name of the person reporting abuse, is granted to a limited list of persons, officials, and agencies (*e.g.*, Department of Health employees responsible for child protective investigations, criminal justice agencies, or school district employees designated as a liaison between the school district and DCF).[11] Employees of the PPS, who are responsible for investigating educator misconduct, are not included on the list of persons or entities granted access to records relating to child abuse, abandonment, or neglect or reports made to the statewide Central Abuse Hotline.

The Education Practices Commission (EPC), as a quasi-judicial body, issues penalties against an educator's certificate.[12] The EPC interprets and applies the standards[13] of professional practice established by the State Board of Education (State Board); revokes or suspends educator certificates, or takes other disciplinary action, for misconduct; reports to and meets with the State Board; and adopts rules.[14]

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[7] *Id.* at (6). An administrative law judge assigned to hear the complaint makes recommendations to the EPC for review and preparation of final order issued by a panel of five EPC members. Sections 1012.79(8)(a), 1012.795(6), and 1012.796(1), F.S. In 2014, 16 of the 19 hearings involved teacher misconduct. Florida Department of Education, Division of K-12 Educator Quality, *2015 Agency Legislative Bill Analysis* for HB 587 (March 16, 2015) at 2, on file with the Committee on Education Pre-K – 12. Unless the complaint involves a felony or crime of moral turpitude, the Commissioner may enter into a deferred prosecution agreement with the certified educator in lieu of finding probable cause. Section 1012.796(3), F.S. An educator may be directed to participate through a deferred prosecution agreement or final order of the EPC in the recovery network program for assistance in obtaining treatment and services for alcohol abuse, drug abuse, or a mental condition. Section 1012.798(1), F.S. Voluntary participation in the program may be considered as a mitigating factor or a condition of disciplinary action. *Id.* at (5).

[8] *Id.* For the period starting January 1, 2015, and ending November 24, 2015, the Commissioner issued findings of probable cause to 565 educators and no probable cause to 356 educators. *See* Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 5, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

[9] Any person who knows, or has reason to suspect, that a child is abused, abandoned, or neglected must report such knowledge or suspicion to the Department of Children and Families (DCF). Section 39.201(1), F.S. School teachers and other school officials or personnel are required to make such reports and the failure to do so is a felony of the third degree. Sections 39.201(1)(d) and 39.205(2), F.S.

[10] Sections 39.202(1) and 39.2021(1), F.S.

[11] Section 39.202(2), F.S.

[12] *Id.*

[13] Code of Ethics of the Education Profession in Florida, Rule 6A-10.080, F.A.C., and Principles of Professional Conduct for the Education Profession in Florida, Rule 6A-10.081, F.A.C., http://www.fldoe.org/teaching/professional-practices/code-of-ethics-principles-of-professio.stml (last visited January 13, 2016).

[14] Sections 1012.79(7) and 1012.795(1), F.S. A district school board retains its authority to discipline teachers and administrators. Section 1012.79(8)(b), F.S.

The EPC consists of 25 members including:[15]

- Eight teachers;
- Five administrators, at least one of whom must represent a private school;
- Seven lay citizens, five of whom must be parents of public school students with no family relation to a public school employee and two of whom must be former district school board members; and
- Five sworn law enforcement officials.

The members are appointed by the State Board based upon nominations made by the Commissioner, subject to confirmation by the Florida Senate.[16]

Effect of Proposed Changes

The bill authorizes, in addition to other individuals and agencies authorized by law,[17] the DCF to release records pertaining to child abuse, abandonment, or neglect cases, which are otherwise confidential and exempt from public records requirements, to DOE employees or agents who investigate or prosecute misconduct by certified educators. Allowing access to such records may assist the DOE in conducting more thorough and informed investigations of educator misconduct.

Also, the bill authorizes the Commissioner to issue a letter of guidance to a certified educator who has had a complaint of misconduct filed against him or her, rather than finding probable cause to prosecute. The bill may provide the Commissioner with more flexibility in determining the course of action to take regarding complaints of educator misconduct by permitting him or her to issue a letter of guidance if deemed more appropriate under the circumstances.

Furthermore, the bill increases the number of teacher members and diversifies the representation on the EPC by including virtual school administrators, former charter school governing board members, and public school officials, while also ensuring that members are citizens of the state.

Specifically, the bill makes the following revisions to EPC membership:

- Redistributes the number of teacher, lay citizen, and sworn law enforcement members while retaining the existing number of members (25) as follows:
  - The number of teacher members is increased from 8 to 10.
  - The number of lay citizen members is reduced from 7 to 4, all of whom must be parents of public school students.
  - The number of sworn law enforcement officials is reduced from 5 to 4.
- Revises the membership to include:

[15] Section 1012.79(1), F.S. The eight teacher members comprise 32 percent of the total EPC membership. *See* Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 4, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

[16] Section 1012.79(1), F.S. Before making nominations, the Commissioner must consult with teaching associations, parent organizations, law enforcement agencies, and other involved associations in the state. *Id.* Teachers, school administrators, and lay citizens who wish to serve on the EPC must be Florida residents to be appointed; however, law enforcement officials are not required to be Florida residents, but they must have expertise in child safety. *Id.*

[17] Section 39.202(2), F.S.

  - Former charter governing board members or former superintendents, assistant superintendents, or deputy superintendents.
  - Virtual school administrators.
- Requires all members to be Florida residents.
- Authorizes the Commissioner, upon request or recommendation from the EPC, to appoint up to 5 emeritus members from previous membership of the EPC to serve 1-year terms and who:
  - May serve up to five 1-year terms;
  - Are voting members for discipline hearings; and
  - Are consulting, nonvoting members for business meetings.

Educator Liability Insurance

Present Situation

Public school educators are immune from personal liability through the doctrine of sovereign immunity.[18] Each district school board may provide legal services for officers and employees charged with civil or criminal actions arising out of, or in the performance of, their assigned duties and responsibilities.[19] Except in the case of excessive force or cruel and unusual punishment, a teacher or other member of the instructional staff, a principal or the principal's designated representative, or a bus driver, may not be held civilly or criminally liable for any action carried out in conformity with State Board and district school board rules regarding the control, discipline, suspension, and expulsion of students.[20]

Furthermore, a student who is enrolled in a state-approved teacher preparation program and who is jointly assigned a clinical field experience under the direction of a regularly employed and certified educator is given the same protection of law as that of the certified educator except for the right to bargain collectively as an employee of the district school board.[21]

During the 2015A Special Session A, the Legislature adopted the educator liability insurance program (program) in ch. 2015-222, L.O.F., the implementing bill for the 2015-2016 General Appropriations Act. The 2015-2016 GAA appropriated $1.2 million for the program to be administered by the DOE.[22] The purpose of the program is to protect full-time instructional personnel from liability for monetary damages and the costs of defending actions as a result of claims arising from incidents that occur during the course of performing professional responsibilities.[23]

[18] No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Section 768.28(9)(a), F.S.
[19] Section 1012.26, F.S. District school boards must reimburse reasonable legal expenses incurred by officers and employees of school boards who are charged with civil or criminal actions arising out of or in the performance of assigned duties and responsibilities upon successful defense by the employee or officer. *Id.*
[20] Section 1012.75, F.S.
[21] Section 1012.39(3), F.S.
[22] Section 10, ch. 2015-222, L.O.F., *implementing* Specific Appropriation 99B, s. 2, ch. 2015-232, L.O.F.
[23] Section 1012.75(3), F.S., *as amended by* s. 10, ch. 2015-222, L.O.F.

Under the program, a minimum of $2 million in liability coverage must be provided to full-time instructional personnel, while other individuals may choose to participate at their own cost, including part-time instructional personnel, administrative personnel, and students enrolled in a state-approved teacher preparation program.[24] The DOE and each district school board is required to notify personnel of the availability of liability coverage.[25] The program is scheduled to expire July 1, 2016.[26]

Effect of Proposed Changes

The bill requires a district school board to provide electronic or written notification to a student participating in a clinical field experience of the availability of educator liability insurance for purchase at his or her own cost. Also, each district school board or postsecondary education institution is prohibited from requiring a student enrolled in a state-approved teacher preparation program to purchase liability insurance as a condition of participation. In effect, the bill ensures that students enrolled in a state approved teacher preparation program are able to participate in such programs without conditional limitations.

Educator Recruitment, Retention, and Assignment

Present Situation

The DOE is responsible for cooperating with teacher organizations, district personnel offices, schools, colleges, and departments of all public and nonpublic postsecondary educational institutions to focus on the recruitment and retention of qualified teachers in the state.[27] In order to fulfill this responsibility, the DOE is required to perform the following duties, including, but not limited to:[28]

- Developing and implementing a system for posting teaching vacancies and establishing a database of applicants accessible within and outside the state.
- Developing and distributing promotional materials relating to a career in teaching.
- Identifying best practices for retaining high-quality teachers.

Current law requires the DOE, in cooperation with district personnel offices, to sponsor a job fair in the central part of the state to match in-state and out-of-state educators and potential educators with teaching opportunities in the state.[29] The DOE may collect a registration fee not to exceed $20 per person and a booth fee not to exceed $250 per school district or other interested participant.[30] The fees are used to promote and operate the job fair and may be used to purchase promotional items such as mementos, awards, and plaques.[31]

In 2006, the Legislature found that there were disparities in the qualifications of teachers assigned to teach in a school with a grade of "A" versus those that were assigned to teach in a

[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] Section 1012.05(1), F.S.
[28] *Id.* at (2).
[29] *Id.* at (4).
[30] *Id.*
[31] *Id.*

school with a grade of "F."[32] The disparities were in the average years of experience, number of out-of-field teachers, median salary, and teacher performance on certification examinations.[33] To address such disparities, the Legislature prohibited school districts from assigning to schools graded "D" or "F" a higher percentage than the school district average of first-time teachers, temporarily certified teachers, teachers in need of improvement, and out-of-field teachers.[34] Each school district was required to certify to the Commissioner that it had met its duty to assign teachers equitably.[35]

Beginning July 1, 2014, school districts were authorized to assign an individual newly hired as instructional personnel to a school that earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the previous 3 years if the individual meets specified criteria (*e.g.*, has received an effective or highly effective rating in previous year or has successfully completed or is enrolled in a teacher preparation program).[36]

The State Board has rulemaking authority regarding those particular teacher assignments; however, it has not adopted any rules to that effect.[37] Although the State Board has not adopted rules, the Commissioner continues to have oversight authority to ensure that school districts are complying with the teacher assignment requirements.[38] Moreover, the State Board has enforcement authority upon notification from the Commissioner that a school district has failed to comply with the requirements.[39]

Effect of Proposed Changes

The bill grants DOE the discretion to sponsor a centrally located job fair for educators and potential educators. In effect, DOE may decide to reallocate resources, which would otherwise be used to sponsor the job fair, in support of other recruitment and retention efforts as it deems necessary.

Also, the bill requires the DOE to coordinate and establish a best practices community to assist school district personnel responsible for recruiting educators and performing other human resource-related functions.

Additionally, the bill removes the State Board's rulemaking authority regarding the assignment of newly hired as instructional personnel to a school that earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the previous 3 years. The State Board has not adopted rules addressing such assignments; however, the Commissioner and State Board retain oversight and enforcement authority, respectively, to ensure that school districts are complying with the requirements.

[32] Section 57, ch. 2006-74, L.O.F., *codified as* s. 1012.2315, F.S.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] Section 2, ch. 2014-32, L.O.F.; *codified as* s. 1012.2315(2)(b), F.S.
[37] Section 1012.2315(2)(b)3., F.S.
[38] Section 1012.2315(2), F.S.
[39] *Id.*

School Leader Preparation Programs

Present Situation

School leaders include school administrators, school principals, school directors, career center directors, and assistant principals.[40] School principals or school directors serve as the administrative head of a school and are responsible for coordinating and administering the instructional and noninstructional activities of the school.[41] Assistant principals are staff members who assist the administrative head of the school regarding curricular and administrative matters.[42]

The Florida Principal Leadership Standards (FPLS) are Florida's core expectations for effective school administrators.[43] The FPLS are research-based; represent necessary knowledge, skills, and abilities for effective school leadership; and are the basis for school administrator preparation programs, certification competencies, certification examinations, performance evaluations, and professional development systems.[44] The FPLS emphasize the ability to improve student learning results; develop and retain quality classroom teachers; and manage the organization, operations, and facilities of a school.[45] The job performance of school administrators must be evaluated annually.[46]

The law requires school leaders to be certified and directs the State Board to classify school services, designate certification subject areas, establish competencies for certification, and certification requirements for all school-based personnel.[47] The State Board has established in rule two classes of certification for school administrators – educational leadership and school principal. Certification in educational leadership qualifies one for any position falling under the classification "school administrator."[48] In order to advance to certification as a school principal, one must first be certified in educational leadership.[49]

In Florida, aspiring school administrators must complete a school leader preparation program approved by DOE.[50] State Board rule authorizes DOE to approve two types of school leader

[40] Section 1012.01(3), F.S. Administrative personnel are K-12 personnel who perform management activities such as developing and executing broad policies for the school district. Administrative personnel include district-based instructional and noninstructional administrators, as well as school administrators who perform administrative duties at the school-level. *Id.*
[41] *Id.*
[42] *Id.*
[43] Rule 6A-5.080, F.A.C.
[44] *Id.*
[45] *Id.*
[46] Section 1012.34(3)(a), F.S. The criteria used to measure school administrator performance are student performance, instructional leadership, and professional and job responsibilities. *Id.* At least one-third of a school administrator's evaluation must be based upon student performance. *Id.* Based upon these criteria, an administrator is assigned a performance rating of highly effective, effective, needs improvement, or unsatisfactory. *Id.* at (2)(e).
[47] Section 1012.55(1)(a)-(b), F.S.
[48] Rule 6A-5.081, F.A.C.
[49] Rule 6A-4.0083, F.A.C.
[50] Rule 6A-5.081, F.A.C. The William Cecil Golden Professional Development Program for School Leaders is a professional development program for school principals. The program was established in collaboration with state and national professional leadership organizations. It is designed to respond to Florida's needs for quality school leadership and support

preparation programs.[51] Level I programs may be offered by school districts and postsecondary institutions and lead to initial certification in educational leadership for the purpose of preparing individuals to serve as school administrators.[52] Level II programs may be offered by school districts, build upon Level I training, and lead to certification as a school principal.[53] State Board rule specifies criteria for initial and continued approval of Level I and Level II school leader preparation programs.[54]

Effect of Proposed Changes

The bill establishes in law a system of accountability and state approval for school leader preparation programs offered by Florida postsecondary institutions and public school districts. Currently, the criteria for approval of school leader programs, including a bi-level certification and preparation process, exists in State Board rule.[55] In effect, the bill codifies the existing approval process and criteria that exists in State Board rule with slight modifications.

The bill provides an effective date of July 1, 2016.

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:

None.

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the efforts of school leaders in improving instruction and student achievement and developing and retaining quality teachers. Professional development provided through the program must be based upon the FPLS and other school leadership standards. Section 1012.986, F.S.

[51] Rule 6A-5.081, F.A.C.

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

C. Government Sector Impact:

CS/CS/SB 894 has no impact on state funds.

The DOE estimates that $3,500 in annual travel expenses would be incurred for all five emeritus members appointed to the Education Practices Commission (EPC), plus an additional $1,250 per year for substitute teacher reimbursements to account for emeritus members who are teachers and for increasing teacher members on the EPC.[56]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.201, 39.202, 1012.05, 1012.2315, 1012.39, 1012.79, and 1012.796.

This bill creates section 1012.562 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:
The committee substitute removes the provision granting a general revenue service charge exemption for the Educational Certification and Service Trust Fund.

CS by Education Pre-K – 12 on January 20, 2016:
The committee substitute makes the following substantial changes to the bill:

- Authorizes the Department of Education to use information from the statewide Central Abuse Hotline, which is administered by the Department of Children and Families, for purposes of educator certification discipline and review.
- Removes the State Board of Education's rulemaking authority regarding school district assignment of newly hired instructional personnel to schools that earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the previous 3 years.
- Removes provisions relating to the educator liability insurance program.

[56] Florida Department of Education, *2016 Agency Legislative Bill Analysis* (SB 894), at 8, *r'cvd* December 23, 2015 (on file with the staff of the Committee on Education Pre-K – 12).

B. Amendments:

None.

237190

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
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	.	
	.	

The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 61 - 69.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 8 - 10

and insert:

s. 1012.05, F.S.; authorizing

By the Committee on Education Pre-K - 12; and Senator Detert

581-02365-16 2016894c1

A bill to be entitled

An act relating to education personnel; amending s. 39.201, F.S.; authorizing certain information to be used for educator certification discipline and review; amending s. 39.202, F.S.; authorizing certain employees or agents of the Department of Education to have access to certain reports and records; amending s. 215.22, F.S.; providing that certain provisions do not apply to the Educational Certification and Service Trust Fund; amending s. 1012.05, F.S.; authorizing rather than requiring the Department of Education to sponsor a job fair meeting certain criteria; requiring the department to coordinate a best practice community; amending s. 1012.2315, F.S.; eliminating certain State Board of Education rulemaking authority related to teacher assignment; amending s. 1012.39, F.S.; providing requirements regarding liability insurance for students performing clinical field experience; creating s. 1012.562, F.S.; requiring the department to approve school leader preparation programs; providing for approval; providing program requirements; providing for rulemaking; amending s. 1012.79, F.S.; revising membership of the Education Practices Commission; authorizing the Commissioner of Education to appoint emeritus members to the commission; amending s. 1012.796, F.S.; authorizing the commissioner to issue a letter of guidance in response to a complaint against a certified teacher or administrator; providing an effective date.

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

581-02365-16 2016894c1

Section 1. Subsection (6) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176. Pursuant to s. 39.202(2)(q), the information in the central abuse hotline may also be used by the Department of Education for purposes of educator certification discipline and review.

Section 2. Paragraphs (q), (r), and (s) of subsection (2) of section 39.202, Florida Statutes, are redesignated as paragraphs (r), (s), and (t), respectively, and a new paragraph (q) is added to that subsection, to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(q) An employee or agent of the Department of Education who is responsible for the investigation or prosecution of misconduct by a certified educator.

Section 3. Subsection (4) of section 215.22, Florida

Statutes, is amended to read:

215.22 Certain income and certain trust funds exempt.—

(4) Notwithstanding the exemptions granted in subsections (1), (2), and (3), this section shall not exempt income of a revenue nature or any trust fund which was subject to the service charge pursuant to s. 215.20 on January 1, 1990. This subsection does not apply to the Educational Certification and Service Trust Fund.

Section 4. Subsection (4) of section 1012.05, Florida Statutes, is amended to read:

1012.05 Teacher recruitment and retention.—

(4) The Department of Education, in cooperation with district personnel offices, may ~~shall~~ sponsor a job fair in a central part of the state to match in-state educators and potential educators and out-of-state educators and potential educators with teaching opportunities in this state. The Department of Education is authorized to collect a job fair registration fee not to exceed $20 per person and a booth fee not to exceed $250 per school district or other interested participating organization. The revenue from the fees shall be used to promote and operate the job fair. Funds may be used to purchase promotional items such as mementos, awards, and plaques. The Department of Education shall also coordinate a best practice community to ensure that school district personnel responsible for teacher recruitment and other human resources functions are operating with the most up-to-date knowledge.

Section 5. Paragraph (b) of subsection (2) of section 1012.2315, Florida Statutes, is amended to read:

1012.2315 Assignment of teachers.—

(2) ASSIGNMENT TO SCHOOLS GRADED "D" or "F".—

(b)1. Beginning July 1, 2014, a school district may assign an individual newly hired as instructional personnel to a school that has earned a grade of "F" in the previous year or any combination of three consecutive grades of "D" or "F" in the previous 3 years pursuant to s. 1008.34 if the individual:

a. Has received an effective rating or highly effective rating in the immediate prior year's performance evaluation pursuant s. 1012.34;

b. Has successfully completed or is enrolled in a teacher preparation program pursuant to s. 1004.04, s. 1004.85, or s. 1012.56, or a teacher preparation program specified in State Board of Education rule, is provided with high quality mentoring during the first 2 years of employment, holds a certificate issued pursuant to s. 1012.56, and holds a probationary contract pursuant to s. 1012.335(2)(a); or

c. Holds a probationary contract pursuant to s. 1012.335(2)(a), holds a certificate issued pursuant to s. 1012.56, and has successful teaching experience, and if, in the judgment of the school principal, students would benefit from the placement of that individual.

2. As used in this paragraph, the term "mentoring" includes the use of student achievement data combined with at least monthly observations to improve the educator's effectiveness in improving student outcomes. Mentoring may be provided by a school district, a teacher preparation program approved pursuant to s. 1004.04, s. 1004.85, or s. 1012.56, or a teacher preparation program specified in State Board of Education rule.

~~3. The State Board of Education shall adopt rules under ss.~~

~~120.536(1) and 120.54 to implement this paragraph.~~

Each school district shall annually certify to the Commissioner of Education that the requirements in this subsection have been met. If the commissioner determines that a school district is not in compliance with this subsection, the State Board of Education shall be notified and shall take action pursuant to s. 1008.32 in the next regularly scheduled meeting to require compliance.

Section 6. Subsection (3) of section 1012.39, Florida Statutes, is amended to read:

1012.39 Employment of substitute teachers, teachers of adult education, nondegreed teachers of career education, and career specialists; students performing clinical field experience.—

(3) A student who is enrolled in a state-approved teacher preparation program in a postsecondary educational institution that is approved by rules of the State Board of Education and who is jointly assigned by the postsecondary educational institution and a district school board to perform a clinical field experience under the direction of a regularly employed and certified educator shall, while serving such supervised clinical field experience, be accorded the same protection of law as that accorded to the certified educator except for the right to bargain collectively as an employee of the district school board. The district school board providing the clinical field experience shall notify the student electronically or in writing of the availability of educator liability insurance under s. 1012.75. A postsecondary educational institution or district

school board may not require a student enrolled in a state-approved teacher preparation program to purchase liability insurance as a condition of participation in any clinical field experience or related activity on the premises of an elementary or secondary school.

Section 7. Section 1012.562, Florida Statutes, is created to read:

1012.562 Public accountability and state approval of school leader preparation programs.—The Department of Education shall establish a process for the approval of Level I and Level II school leader preparation programs that will enable aspiring school leaders to obtain their certificate in educational leadership under s. 1012.56. School leader preparation programs must be competency-based, aligned to the principal leadership standards adopted by the state board, and open to individuals employed by public schools, including charter schools and virtual schools. Level I programs may be offered by school districts or postsecondary institutions and lead to initial certification in educational leadership for the purpose of preparing individuals to serve as school administrators. Level II programs may be offered by school districts, build upon Level I training, and lead to renewal certification as a school principal.

(1) PURPOSE.—The purpose of school leader preparation programs is to:

(a) Increase the supply of effective school leaders in the public schools of this state.

(b) Produce school leaders who are prepared to lead the state's diverse student population in meeting high standards for

academic achievement.

(c) Enable school leaders to facilitate the development and retention of effective and highly effective classroom teachers.

(d) Produce leaders with the competencies and skills necessary to achieve the state's education goals.

(e) Sustain the state system of school improvement and education accountability.

(2) LEVEL I PROGRAMS.—

(a) Initial approval of a Level I program shall be for a period of 5 years. A postsecondary institution or school district may submit to the department in a format prescribed by the department an application to establish a Level I school leader preparation program. To be approved, a Level I program must:

1. Provide competency-based training aligned to the principal leadership standards adopted by the State Board of Education.

2. If the program is provided by a postsecondary institution, partner with at least one school district.

3. Describe the qualifications that will be used to determine program admission standards, including a candidate's instructional expertise and leadership potential.

4. Describe how the training provided through the program will be aligned to the personnel evaluation criteria under s. 1012.34.

(b) Renewal of a Level I program's approval shall be for a period of 5 years and shall be based upon evidence of the program's continued ability to meet the requirements of paragraph (a). A postsecondary institution or school district

must submit an institutional program evaluation plan in a format prescribed by the department for a Level I program to be considered for renewal. The plan must include:

1. The percentage of personnel who complete the program and are placed in school leadership positions in public schools within the state.

2. Results from the personnel evaluations required under s. 1012.34 for personnel who complete the program.

3. The passage rate of personnel who complete the program on the Florida Education Leadership Examination.

4. The impact personnel who complete the program have on student learning as measured by the formulas developed by the commissioner pursuant to s. 1012.34(7).

5. Strategies for continuous improvement of the program.

6. Strategies for involving personnel who complete the program, other school personnel, community agencies, business representatives, and other stakeholders in the program evaluation process.

7. Additional data included at the discretion of the postsecondary institution or school district.

(c) A Level I program must guarantee the high quality of personnel who complete the program for the first 2 years after program completion or the person's initial certification as a school leader, whichever occurs first. If a person who completed the program is evaluated at less than highly effective or effective under s. 1012.34 and the person's employer requests additional training, the Level I program must provide additional training at no cost to the person or his or her employer. The training must include the creation of an individualized plan

agreed to by the employer that includes specific learning outcomes. The Level I program is not responsible for the person's employment contract with his or her employer.

(3) LEVEL II PROGRAMS.—Initial approval and subsequent renewal of a Level II program shall be for a period of 5 years. A school district may submit to the department in a format prescribed by the department an application to establish a Level II school leader preparation program or for program renewal. To be approved or renewed, a Level II program must:

(a) Demonstrate that personnel accepted into the Level II program have:

1. Obtained their certificate in educational leadership under s. 1012.56.

2. Earned a highly effective or effective designation under s. 1012.34.

3. Satisfactorily performed instructional leadership responsibilities as measured by the evaluation system in s. 1012.34.

(b) Demonstrate that the Level II program:

1. Provides competency-based training aligned to the principal leadership standards adopted by the State Board of Education.

2. Provides training aligned to the personnel evaluation criteria under s. 1012.34 and professional development program in s. 1012.986.

3. Provides individualized instruction using a customized learning plan for each person enrolled in the program that is based on data from self-assessment, selection, and appraisal instruments.

4. Conducts program evaluations and implements program improvements using input from personnel who completed the program and employers and data gathered pursuant to paragraph (2)(b).

(c) Gather and monitor the data specified in paragraph (2)(b).

(4) RULES.—The State Board of Education shall adopt rules to administer this section.

Section 8. Subsection (1) of section 1012.79, Florida Statutes, is amended to read:

1012.79 Education Practices Commission; organization.—

(1) The Education Practices Commission is composed ~~consists~~ of the following 25 members: 10~~, including 8~~ teachers; 5 administrators, at least one of whom represents ~~shall represent~~ a private or virtual school; 4 ~~7~~ lay citizens who are~~, 5 of whom shall be~~ parents of public school students and who are unrelated to public school employees; ~~and~~ 2 ~~of whom shall be~~ former charter school governing board or district school board members or former superintendents, assistant superintendents, or deputy superintendents; and 4 ~~5~~ sworn law enforcement officials, appointed by the State Board of Education from nominations by the Commissioner of Education and subject to Senate confirmation. Before ~~Prior to~~ making nominations, the commissioner shall consult with teaching associations, parent organizations, law enforcement agencies, and other involved associations in the state. In making nominations, the commissioner shall attempt to achieve equal geographical representation, as closely as possible.

(a) A teacher member, in order to be qualified for

appointment:

1. Must be certified to teach in the state.

~~2. Must be a resident of the state.~~

2.~~3.~~ Must have practiced the profession in this state for at least 5 years immediately preceding the appointment.

(b) A school administrator member, in order to be qualified for appointment:

1. Must have an endorsement on the educator certificate in the area of school administration or supervision.

~~2. Must be a resident of the state.~~

2.~~3.~~ Must have practiced the profession as an administrator for at least 5 years immediately preceding the appointment.

~~(c) The lay members must be residents of the state.~~

(c)~~(d)~~ The law enforcement official members must have served in the profession for at least 5 years immediately preceding appointment and have background expertise in child safety.

(d) The Commissioner of Education, upon request or recommendation from the commission, may also appoint up to five emeritus members from the commission's prior membership to serve 1-year terms. Notwithstanding any prior service on the commission, an emeritus member may serve up to five 1-year terms. An emeritus member serves as a voting member at a discipline hearing and as a consulting but nonvoting member during a business meeting.

(e) All members must be residents of the state.

Section 9. Subsection (3) of section 1012.796, Florida Statutes, is amended to read:

1012.796 Complaints against teachers and administrators;

procedure; penalties.—

(3) The department staff shall advise the commissioner concerning the findings of the investigation. The department general counsel or members of that staff shall review the investigation and advise the commissioner concerning probable cause or lack thereof. The determination of probable cause shall be made by the commissioner. The commissioner shall provide an opportunity for a conference, if requested, prior to determining probable cause. The commissioner may enter into deferred prosecution agreements in lieu of finding probable cause if, in his or her judgment, such agreements are in the best interests of the department, the certificateholder, and the public. Such deferred prosecution agreements shall become effective when filed with the clerk of the Education Practices Commission. However, a deferred prosecution agreement may ~~shall~~ not be entered into if there is probable cause to believe that a felony or an act of moral turpitude, as defined by rule of the State Board of Education, has occurred. Upon finding no probable cause, the commissioner shall dismiss the complaint and may issue a letter of guidance to the certificateholder.

Section 10. This act shall take effect July 1, 2016.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 11, 2016

I respectfully request that **Senate Bill #894**, relating to Education Personnel, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/18/2016
Meeting Date

CS/SB 894
Bill Number (if applicable)

Topic CS/SB 894: Education Personnel

Amendment Barcode (if applicable)

Name Tanya Cooper

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Department of Education

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	PCS/SB 922 (622386)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Montford
SUBJECT:	Solid Waste Management
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Rogers	EP	**Favorable**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.	Howard	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 922:

- Establishes a waste tire abatement program and provides for funding of the program;
- Deletes the waste tire grant program and authorizes the small county consolidated grant program to provide grants for waste tire abatement;
- Amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000;
- Recreates and modifies provisions related to the solid waste landfill closure account;
- Provides authority to the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient;
- Expands the authority of the DEP to provide funding for the closure and long-term care of solid waste management facilities;
- Expands the types of financial assurances permittees may provide for closure and long-term care of solid waste management facilities; and
- Authorizes funds to be used for closure and long-term care of waste management facilities that are not required to have an operating permit.

The bill authorizes the DEP to use funds from the Solid Waste Management Trust Fund to pay for costs not covered by insurance policies or alternative forms of financial assurances. These costs could have a significant fiscal impact to the Solid Waste Management Trust Fund.

Except as otherwise expressly provided in this act, this act takes effect on July 1, 2016.

II. Present Situation:

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering;[1] waste tire fees;[2] and oil related fees, fines and penalties.[3] The Department of Environmental Protection (DEP) must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.[4]

Landfill Closure

Pursuant to section 403.704, F.S., the DEP is responsible for implementing and enforcing the state solid waste management program, which provides the guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Florida Administrative Code Chapters 62-701 to 62-722, establish standards for the construction, operation, and closure of solid waste management facilities and provisions governing other aspects of Florida's solid waste management program. Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. Closure plans include:

- A design plan;
- A closure operation plan;
- A long-term care plan; and
- Proof of financial assurance, which may include closure insurance, for long-term care and a cost estimate for closure pursuant to Florida Administrative Code Rule 62-701.630.

[1] Section 403.413(6)(a), F.S.
[2] Section 403.718(2), F.S.
[3] Section 403.759, F.S.
[4] Section 403.709(1), F.S.

Section 403.7125, F.S., provides that the owner or operator of a landfill is responsible for the closure of the landfill and is liable for its improper closure. The owner or operator of a federal, state, or local government owned landfill is required to establish a fee to ensure the financial resources are available for the closure of the landfill.

Prior to receiving a permit to operate a landfill or construction and demolition debris disposal facility, the owner or operator of the facility must provide financial assurance to assure the availability of financial resources to properly close and provide long-term care of the landfill.[5] To establish the amount of financial assurance, the owner must estimate the cost of closure and long-term maintenance as part of a landfill permit application.[6] The owner must update the cost estimate annually.[7] Allowable financial mechanisms include irrevocable letters of credit, financial guarantee bonds, performance bonds, financial tests, corporate guarantee, trust fund agreements, and insurance certificates.[8] Government entities that operate a landfill may also use a landfill management escrow account as a financial assurance instrument.[9]

Operators of solid waste disposal units must receive a closure permit to close a landfill.[10] Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.[11]

These facilities must also perform long-term care for 30 years.[12] This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.[13]

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by the DEP; and

[5] Fla. Admin. Code R. 62-701.630(2).
[6] Fla. Admin. Code R. 62-701.630(3).
[7] Fla. Admin. Code R. 62-701.630(4).
[8] Fla. Admin. Code R. 62-701.630(2)(b)2.
[9] Fla. Admin. Code R. 62-701.630(2)(b)1.
[10] Fla. Admin. Code R. 62-701.600(2).
[11] Fla. Admin. Code R. 62-701.600(3)(f)2.
[12] Fla. Admin. Code R. 62-701.620(1)
[13] *Id.*

- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the 2015 implementing bill, SB 2502-A, and is set to expire July 1, 2016.[14]

The DEP is currently using this authority and funds from the SWMTF landfill closure account to enter into contracts with a third party for closure construction and related environmental services to close facilities where an insurance policy was used to provide financial assurance.[15] Funds are being used to enter into contracts for closure activities and then receive reimbursement funds from insurers, up to the limits of coverage under the insurance. Landfills being addressed in this manner are:

- Williams Road (Hillsborough County);
- Coyote Navarre (Santa Rosa County);
- Coyote East (Walton County);
- Coyote West (Walton County); and
- Cerny Road (Escambia County).[16]

Waste Tire Abatement

The solid waste management grant program receives up to 37 percent of the funds deposited into the SWMTF. Up to 50 percent of the funds are for a consolidated grant program for small counties with populations fewer than 100,000, and grants are distributed to eligible counties equally. Programs supported by the consolidated grant program include:

- General solid waste management;
- Litter prevention and control; and
- Recycling and education programs.[17]

Section 403.7095(2), F.S., also directs the DEP to develop a waste tire grant program within the solid waste management grant program funded by up to 50 percent of the funds distributed from the SWMTF to make grants available to all counties. At least 25 percent of the funds are distributed equally to each county with a population fewer than 100,000. The remaining funds are distributed to counties with populations greater than 100,000 and are distributed on the basis of population.[18] Grants may be used for activities such as:

- Construction of waste tire processing facilities;
- Operation of waste tire processing facilities;
- Contracting for waste tire facility service;
- Equipment for waste tire processing facilities;
- Removal of waste tires;

[14] Ch. 2015-222, s. 53, Laws of Fla.
[15] DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[16] *Id.*
[17] Section 403.7095(1), F.S.
[18] Section 403.7095(2), F.S.

- Purchasing materials made from waste tires;
- Research to facilitate waste tire recycling;
- Establishing waste tire collection centers;
- Incentives for establishing private waste tire collection centers; and
- Performing or contracting for enforcement activities.[19]

According to the DEP, funding for waste tire grants for all counties was last appropriated during the 2003 legislative session.[20] Funding for DEP's waste tire abatement program, which provides for identification, evaluation, and cleanup of waste tire sites,[21] has not received funds since 2009.[22] The DEP has identified more than 440,000 tires located at 26 sites in Florida.[23] The number of tires at these sites range from 1,500 to over 250,000. Preliminary abatement cost estimates per site range from $2,704 to $570,900. The DEP's preliminary abatement cost estimate for all 26 sites is $961,390.[24]

III. Effect of Proposed Changes:

Section 1 amends s. 403.709, F.S., to allow up to five percent of the 37 percent of funds from the SWMTF designated for the solid waste management grant program to be used for a waste tire abatement program.

The bill revises the solid waste landfill closure account to authorize the Department of Environmental Protection (DEP) to provide funding for the closing and long-term care of a solid waste management facility. If the DEP contracts with a third party, the bill expands the DEP's authority by:

- Authorizing the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if the facility was not required to obtain a permit to operate from the DEP. This serves to increase the number of facilities that the DEP may provide funding for cleanup.
- Allowing the DEP to use funds from the solid waste landfill closure account when the permittee provided an acceptable alternative form of sufficiently documented financial assurance, for closing and long-term care of a solid waste management facility. This would also increase the number of facilities that the DEP may provide funding for cleanup.

The bill provides that funds received from other parties, rather than just an insurer, for reimbursing the costs of closing or long-term care of a facility are to be deposited in the solid waste landfill closure account.

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[19] DEP, *Solid Waste Tire Grant Application*, (Dec. 17, 2013) *available at* http://www.dep.state.fl.us/waste/quick_topics/forms/documents/62-716/716_3.pdf, Incorporated by reference in Fla. Admin. Code R. 62-716.600.
[20] DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[21] DEP, *Tires General Information* (Jul. 8, 2015) *available at* http://www.dep.state.fl.us/waste/categories/tires/pages/info.htm (last visited Jan. 16, 2016).
[22] DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[23] *Id.*
[24] *Id.*

The bill provides that if the funds available under an insurance policy or an alternative form of financial assurance are insufficient or otherwise unavailable to perform or complete the closing or long-term care of a facility, the DEP may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the approved facility closure or long-term care activities. This will expand the circumstances under which the DEP may expend funds for closure and long-term care.

Section 2 amends s. 403.7095, F.S., effective upon becoming law, to remove provisions establishing the waste tire grant program.

The bill expands the allowable uses of funds from the small county consolidated grant program by adding waste tire abatement to the list of programs that may be supported by the grant program.

The bill amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000.

The bill removes an obsolete provision that expired July 1, 2015, directing the DEP to award $3,000,000 in grants equally to counties with populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs.

Sections 3 and 4 reenact ss. 403.413 and 403.7032, F.S., due to changes made by the bill.

Section 5 provides an effective date of July 1, 2016, except as otherwise expressly provided in the bill.

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:

None.

C. Government Sector Impact:

PCS/SB 922 may provide a positive fiscal impact for small counties with a waste tire abatement program.

The bill authorizes the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for facility closures or long-term care activities that are not covered from insurance policies or alternative forms of financial assurance. This could have a negative, indeterminate fiscal impact on the Solid Waste Management Trust Fund.

The DEP does not currently have any budget authority to pay for solid waste closure activities; however, the DEP requested $1 million in their Legislative Budget Request. SB 2500, the Senate proposed 2016-2017 General Appropriations Bill, includes $1 million for this purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.709 and 403.7095.

The bill reenacts the following sections of the Florida Statutes: 403.413 and 403.7032.

IX. Additional Information:

A. Committee Substitute –Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on General Government on February 11, 2016:
The CS provides authority to the Department of Environmental Protection to use funds from the Solid Waste Management Trust Fund, instead of the solid waste landfill closure account, to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient.

The CS makes amendments to s. 403.7095, F.S., effective upon becoming law and amends the eligibility for grant funding to small counties with populations fewer than 110,000 instead of counties with populations fewer than 100,000.

The CS changes the effective date of the bill from July 1, 2016, to except as otherwise expressly provided in the act, the act takes effect on July 1, 2016.

B. Amendments:

None.

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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to solid waste management; amending s. 403.709, F.S.; providing for the funding of a waste tire abatement program from the Solid Waste Management Trust Fund up to a specified percentage of total funds; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund; specifying the purpose of the account; authorizing the Department of Environmental Protection to use account funds to contract with a third party for the closing and long-term care of solid waste management facilities under specified circumstances; requiring the department to deposit certain funds into the solid waste landfill closure account; authorizing the department to use funds from the Solid Waste Management Trust Fund to pay for or reimburse specified expenses under certain circumstances; deleting a solid waste landfill closure account within the Solid Waste Management Trust Fund; amending s. 403.7095, F.S.; authorizing waste tire abatement programs under the small county consolidated grant program; removing the waste tire abatement program supported by the solid waste management grant program; removing distribution requirements; deleting an obsolete provision; reenacting ss. 403.413(6)(a) and 403.7032(5)(h), F.S., relating to the Florida Litter Law and recycling, respectively, to incorporate the

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amendments made to s. 403.7095, F.S., in references thereto; providing effective dates.

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

Section 1. Paragraph (e) of subsection (1) and subsection (5) of section 403.709, Florida Statutes, are amended, present subsections (2) through (4) of that section are redesignated as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(1) From the annual revenues deposited in the trust fund, unless otherwise specified in the General Appropriations Act:

(e) Up to 37 percent shall be used for funding a waste tire abatement program and a solid waste management grant program pursuant to s. 403.7095 for activities relating to recycling and waste reduction, including waste tires requiring final disposal. Of the funding specified in this paragraph, no more than 5 percent of the total may be used for funding the waste tire abatement program.

(2) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities.

(a) The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has, had, or was not required to obtain a department permit to operate the facility;

2. The permittee, where required by permit or rule, provided proof of financial assurance for closure in the form of an insurance certificate or an alternative form of financial assurance mechanism established pursuant to s. 403.7125;

3. The department has ordered the facility closed or has deemed the facility abandoned;

4. The closure of the facility is accomplished in substantial accordance with a closure plan approved by the department; and

5. The department has sufficient documentation to confirm that the issuer of the insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete the closing and long-term care of the facility.

(b) The department shall deposit all funds received from the insurer or other parties for reimbursing the costs of closing or long-term care of the facility under this subsection into the solid waste landfill closure account.

(c) If the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care under this subsection, and the department has used all such funds from the insurance policy or alternative form of financial assurance, the department may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the approved facility closure or long-term care activities.

~~(5)(a) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:~~

~~1. The facility has or had a department permit to operate the facility;~~

~~2. The permittee provided proof of financial assurance for closure in the form of an insurance certificate;~~

~~3. The facility is deemed to be abandoned or was ordered to close by the department;~~

~~4. Closure is accomplished in substantial accordance with a closure plan approved by the department; and~~

~~5. The department has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.~~

~~(b) The department shall deposit the funds received from the insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.~~

~~(c) This subsection expires July 1, 2016.~~

Section 2. Effective upon becoming a law, section 403.7095, Florida Statutes, is amended to read:

403.7095 Solid waste management grant program.—

(1) The department shall develop a consolidated grant program for small counties having populations fewer than 110,000

~~100,000~~, with grants to be distributed equally among eligible counties. Programs to be supported with the small-county consolidated grants include those for the purpose of general solid waste management, litter prevention and control, waste tire abatement, and recycling and education programs.

~~(2) The department shall develop a waste tire grant program making grants available to all counties. The department shall ensure that at least 25 percent of the funding available for waste tire grants is distributed equally to each county having a population fewer than 100,000. Of the remaining funds distributed to counties having a population of 100,000 or greater, the department shall distribute those funds on the basis of population.~~

~~(3) From the funds made available pursuant to s. 403.709(1)(c) for the grant program created by this section, the following distributions shall be made:~~

~~(a) Up to 50 percent for the program described in subsection (1); and~~

~~(b) Up to 50 percent for the program described in subsection (2).~~

(2) ~~(4)~~ The department may adopt rules necessary to administer this section, including, but not limited to, rules governing timeframes for submitting grant applications, criteria for prioritizing, matching criteria, maximum grant amounts, and allocation of appropriated funds based upon project and applicant size.

~~(5) Notwithstanding any other provision of this section, and for the 2014-2015 fiscal year only, the Department of Environmental Protection shall award the sum of $3 million in~~

~~grants equally to counties having populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs. This subsection expires July 1, 2015.~~

Section 3. For the purpose of incorporating the amendments made by this act to section 403.7095, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 403.413, Florida Statutes, is reenacted to read:

403.413 Florida Litter Law.—

(6) PENALTIES; ENFORCEMENT.—

(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes is guilty of a noncriminal infraction, punishable by a civil penalty of $100, from which $50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

Section 4. For the purpose of incorporating the amendments made by this act to section 403.7095, Florida Statutes, in a reference thereto, paragraph (h) of subsection (5) of section 403.7032, Florida Statutes, is reenacted to read:

403.7032 Recycling.—

(5) The Department of Environmental Protection shall create the Recycling Business Assistance Center by December 1, 2010. In carrying out its duties under this subsection, the department shall consult with state agency personnel appointed to serve as economic development liaisons under s. 288.021 and seek

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technical assistance from Enterprise Florida, Inc., to ensure the Recycling Business Assistance Center is positioned to succeed. The purpose of the center shall be to serve as the mechanism for coordination among state agencies and the private sector in order to coordinate policy and overall strategic planning for developing new markets and expanding and enhancing existing markets for recyclable materials in this state, other states, and foreign countries. The duties of the center must include, at a minimum:

(h) Providing evaluation of solid waste management grants, pursuant to s. 403.7095, to reduce the flow of solid waste to disposal facilities and encourage the sustainable recovery of materials from Florida's waste stream.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2016.

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 Appropriations

BILL:	CS/SB 922
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and Senator Montford
SUBJECT:	Solid Waste Management
DATE:	February 22, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Rogers	EP	**Favorable**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.	Howard	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 922:

- Establishes a waste tire abatement program and provides for funding of the program;
- Deletes the waste tire grant program and authorizes the small county consolidated grant program to provide grants for waste tire abatement;
- Amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000;
- Recreates and modifies provisions related to the solid waste landfill closure account;
- Provides authority to the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient;
- Expands the authority of the DEP to provide funding for the closure and long-term care of solid waste management facilities;
- Expands the types of financial assurances permittees may provide for closure and long-term care of solid waste management facilities; and
- Authorizes funds to be used for closure and long-term care of waste management facilities that are not required to have an operating permit.

The bill authorizes the DEP to use funds from the Solid Waste Management Trust Fund to pay for costs not covered by insurance policies or alternative forms of financial assurances. These costs could have a significant fiscal impact to the Solid Waste Management Trust Fund.

Except as otherwise expressly provided in this act, this act takes effect on July 1, 2016.

II. Present Situation:

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering;[1] waste tire fees;[2] and oil related fees, fines and penalties.[3] The Department of Environmental Protection (DEP) must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.[4]

Landfill Closure

Pursuant to section 403.704, F.S., the DEP is responsible for implementing and enforcing the state solid waste management program, which provides the guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Florida Administrative Code Chapters 62-701 to 62-722, establish standards for the construction, operation, and closure of solid waste management facilities and provisions governing other aspects of Florida's solid waste management program. Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. Closure plans include:

- A design plan;
- A closure operation plan;
- A long-term care plan; and
- Proof of financial assurance, which may include closure insurance, for long-term care and a cost estimate for closure pursuant to Florida Administrative Code Rule 62-701.630.

[1] Section 403.413(6)(a), F.S.
[2] Section 403.718(2), F.S.
[3] Section 403.759, F.S.
[4] Section 403.709(1), F.S.

Section 403.7125, F.S., provides that the owner or operator of a landfill is responsible for the closure of the landfill and is liable for its improper closure. The owner or operator of a federal, state, or local government owned landfill is required to establish a fee to ensure the financial resources are available for the closure of the landfill.

Prior to receiving a permit to operate a landfill or construction and demolition debris disposal facility, the owner or operator of the facility must provide financial assurance to assure the availability of financial resources to properly close and provide long-term care of the landfill.[5] To establish the amount of financial assurance, the owner must estimate the cost of closure and long-term maintenance as part of a landfill permit application.[6] The owner must update the cost estimate annually.[7] Allowable financial mechanisms include irrevocable letters of credit, financial guarantee bonds, performance bonds, financial tests, corporate guarantee, trust fund agreements, and insurance certificates.[8] Government entities that operate a landfill may also use a landfill management escrow account as a financial assurance instrument.[9]

Operators of solid waste disposal units must receive a closure permit to close a landfill.[10] Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.[11]

These facilities must also perform long-term care for 30 years.[12] This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.[13]

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by the DEP; and

[5] Fla. Admin. Code R. 62-701.630(2).
[6] Fla. Admin. Code R. 62-701.630(3).
[7] Fla. Admin. Code R. 62-701.630(4).
[8] Fla. Admin. Code R. 62-701.630(2)(b)2.
[9] Fla. Admin. Code R. 62-701.630(2)(b)1.
[10] Fla. Admin. Code R. 62-701.600(2).
[11] Fla. Admin. Code R. 62-701.600(3)(f)2.
[12] Fla. Admin. Code R. 62-701.620(1)
[13] *Id.*

- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the 2015 implementing bill, SB 2502-A, and is set to expire July 1, 2016.[14]

The DEP is currently using this authority and funds from the SWMTF landfill closure account to enter into contracts with a third party for closure construction and related environmental services to close facilities where an insurance policy was used to provide financial assurance.[15] Funds are being used to enter into contracts for closure activities and then receive reimbursement funds from insurers, up to the limits of coverage under the insurance. Landfills being addressed in this manner are:

- Williams Road (Hillsborough County);
- Coyote Navarre (Santa Rosa County);
- Coyote East (Walton County);
- Coyote West (Walton County); and
- Cerny Road (Escambia County).[16]

Waste Tire Abatement

The solid waste management grant program receives up to 37 percent of the funds deposited into the SWMTF. Up to 50 percent of the funds are for a consolidated grant program for small counties with populations fewer than 100,000, and grants are distributed to eligible counties equally. Programs supported by the consolidated grant program include:

- General solid waste management;
- Litter prevention and control; and
- Recycling and education programs.[17]

Section 403.7095(2), F.S., also directs the DEP to develop a waste tire grant program within the solid waste management grant program funded by up to 50 percent of the funds distributed from the SWMTF to make grants available to all counties. At least 25 percent of the funds are distributed equally to each county with a population fewer than 100,000. The remaining funds are distributed to counties with populations greater than 100,000 and are distributed on the basis of population.[18] Grants may be used for activities such as:

- Construction of waste tire processing facilities;
- Operation of waste tire processing facilities;
- Contracting for waste tire facility service;
- Equipment for waste tire processing facilities;
- Removal of waste tires;

[14] Ch. 2015-222, s. 53, Laws of Fla.
[15] DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[16] *Id.*
[17] Section 403.7095(1), F.S.
[18] Section 403.7095(2), F.S.

- Purchasing materials made from waste tires;
- Research to facilitate waste tire recycling;
- Establishing waste tire collection centers;
- Incentives for establishing private waste tire collection centers; and
- Performing or contracting for enforcement activities.[19]

According to the DEP, funding for waste tire grants for all counties was last appropriated during the 2003 legislative session.[20] Funding for DEP's waste tire abatement program, which provides for identification, evaluation, and cleanup of waste tire sites,[21] has not received funds since 2009.[22] The DEP has identified more than 440,000 tires located at 26 sites in Florida.[23] The number of tires at these sites range from 1,500 to over 250,000. Preliminary abatement cost estimates per site range from $2,704 to $570,900. The DEP's preliminary abatement cost estimate for all 26 sites is $961,390.[24]

III. Effect of Proposed Changes:

Section 1 amends s. 403.709, F.S., to allow up to five percent of the 37 percent of funds from the SWMTF designated for the solid waste management grant program to be used for a waste tire abatement program.

The bill revises the solid waste landfill closure account to authorize the Department of Environmental Protection (DEP) to provide funding for the closing and long-term care of a solid waste management facility. If the DEP contracts with a third party, the bill expands the DEP's authority by:

- Authorizing the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if the facility was not required to obtain a permit to operate from the DEP. This serves to increase the number of facilities that the DEP may provide funding for cleanup.
- Allowing the DEP to use funds from the solid waste landfill closure account when the permittee provided an acceptable alternative form of sufficiently documented financial assurance, for closing and long-term care of a solid waste management facility. This would also increase the number of facilities that the DEP may provide funding for cleanup.

The bill provides that funds received from other parties, rather than just an insurer, for reimbursing the costs of closing or long-term care of a facility are to be deposited in the solid waste landfill closure account.

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[19] DEP, *Solid Waste Tire Grant Application*, (Dec. 17, 2013) *available at* http://www.dep.state.fl.us/waste/quick_topics/forms/documents/62-716/716_3.pdf, Incorporated by reference in Fla. Admin. Code R. 62-716.600.
[20] DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[21] DEP, *Tires General Information* (Jul. 8, 2015) *available at* http://www.dep.state.fl.us/waste/categories/tires/pages/info.htm (last visited Jan. 16, 2016).
[22] DEP, *Senate Bill 922 Agency Analysis* (Dec. 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[23] *Id.*
[24] *Id.*

The bill provides that if the funds available under an insurance policy or an alternative form of financial assurance are insufficient or otherwise unavailable to perform or complete the closing or long-term care of a facility, the DEP may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the approved facility closure or long-term care activities. This will expand the circumstances under which the DEP may expend funds for closure and long-term care.

Section 2 amends s. 403.7095, F.S., effective upon becoming law, to remove provisions establishing the waste tire grant program.

The bill expands the allowable uses of funds from the small county consolidated grant program by adding waste tire abatement to the list of programs that may be supported by the grant program.

The bill amends the eligibility for the solid waste management grant program to include small counties with populations fewer than 110,000.

The bill removes an obsolete provision that expired July 1, 2015, directing the DEP to award $3,000,000 in grants equally to counties with populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs.

Sections 3 and 4 reenact ss. 403.413 and 403.7032, F.S., due to changes made by the bill.

Section 5 provides an effective date of July 1, 2016, except as otherwise expressly provided in the bill.

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:

None.

C. Government Sector Impact:

CS/SB 922 may provide a positive fiscal impact for small counties with a waste tire abatement program.

The bill authorizes the Department of Environmental Protection (DEP) to use funds from the Solid Waste Management Trust Fund to pay for facility closures or long-term care activities that are not covered from insurance policies or alternative forms of financial assurance. This could have a negative, indeterminate fiscal impact on the Solid Waste Management Trust Fund.

The DEP does not currently have any budget authority to pay for solid waste closure activities; however, the DEP requested $1 million in their Legislative Budget Request. SB 2500, the Senate proposed 2016-2017 General Appropriations Bill, includes $1 million for this purpose.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.709 and 403.7095.

The bill reenacts the following sections of the Florida Statutes: 403.413 and 403.7032.

IX. Additional Information:

A. Committee Substitute –Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on February 18, 2016:
The CS provides authority to the Department of Environmental Protection to use funds from the Solid Waste Management Trust Fund, instead of the solid waste landfill closure account, to pay for or reimburse additional expenses needed for performing or completing the facility closure or long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient.

The CS makes amendments to s. 403.7095, F.S., effective upon becoming law and amends the eligibility for grant funding to small counties with populations fewer than 110,000 instead of counties with populations fewer than 100,000.

The CS changes the effective date of the bill from July 1, 2016, to except as otherwise expressly provided in the act, the act takes effect on July 1, 2016.

B. Amendments:

None.

By Senator Montford

3-00576A-16 2016922__

A bill to be entitled

An act relating to solid waste management; amending s. 403.709, F.S.; providing for the funding of a waste tire abatement program from the Solid Waste Management Trust Fund up to a specified percentage of total funds; establishing a solid waste landfill closure account within the Solid Waste Management Trust Fund; specifying the purpose of the account; authorizing the Department of Environmental Protection to use account funds to contract with a third party for the closing and long-term care of solid waste management facilities under specified circumstances; requiring the department to deposit certain funds into the solid waste landfill closure account; authorizing the department to use funds from the account to pay for or reimburse specified expenses under certain circumstances; deleting a solid waste landfill closure account within the Solid Waste Management Trust Fund; amending s. 403.7095, F.S.; authorizing waste tire abatement programs under the small county consolidated grant program; removing the waste tire abatement program supported by the solid waste management grant program; removing distribution requirements; deleting an obsolete provision; reenacting ss. 403.413(6)(a) and 403.7032(5)(h), F.S., relating to the Florida Litter Law and recycling, respectively, to incorporate the amendments made to s. 403.7095, F.S., in references thereto; providing an effective date.

Florida Senate - 2016 **SB 922**

3-00576A-16 2016922__

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

Section 1. Paragraph (e) of subsection (1) and subsection (5) of section 403.709, Florida Statutes, are amended, present subsections (2) through (4) of that section are redesignated as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(1) From the annual revenues deposited in the trust fund, unless otherwise specified in the General Appropriations Act:

(e) Up to 37 percent shall be used for funding a waste tire abatement program and a solid waste management grant program pursuant to s. 403.7095 for activities relating to recycling and waste reduction, including waste tires requiring final disposal. Of the funding specified in this paragraph, no more than 5 percent of the total may be used for funding the waste tire abatement program.

(2) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities.

(a) The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has, had, or was not required to obtain a department permit to operate the facility;

2. The permittee, where required by permit or rule,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

provided proof of financial assurance for closure in the form of an insurance certificate or an alternative form of financial assurance mechanism established pursuant to s. 403.7125;

3. The department has ordered the facility closed or has deemed the facility abandoned;

4. The closure of the facility is accomplished in substantial accordance with a closure plan approved by the department; and

5. The department has sufficient documentation to confirm that the issuer of the insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete the closing and long-term care of the facility.

(b) The department shall deposit all funds received from the insurer or other parties for reimbursing the costs of closing or long-term care of the facility under this subsection into the solid waste landfill closure account.

(c) If the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise inaccessible, to perform or complete the facility closing or long-term care under this subsection, and the department has used all such funds from the insurance policy or alternative form of financial assurance, the department may use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed for performing or completing the approved facility closure or long-term care activities.

~~(5)(a) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and~~

~~long-term care of solid waste management facilities. The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:~~

~~1. The facility has or had a department permit to operate the facility;~~

~~2. The permittee provided proof of financial assurance for closure in the form of an insurance certificate;~~

~~3. The facility is deemed to be abandoned or was ordered to close by the department;~~

~~4. Closure is accomplished in substantial accordance with a closure plan approved by the department; and~~

~~5. The department has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.~~

~~(b) The department shall deposit the funds received from the insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.~~

~~(c) This subsection expires July 1, 2016.~~

Section 2. Section 403.7095, Florida Statutes, is amended to read:

403.7095 Solid waste management grant program.—

(1) The department shall develop a consolidated grant program for small counties having populations fewer than 100,000, with grants to be distributed equally among eligible counties. Programs to be supported with the small-county consolidated grants include those for the purpose of general

solid waste management, litter prevention and control, waste tire abatement, and recycling and education programs.

~~(2) The department shall develop a waste tire grant program making grants available to all counties. The department shall ensure that at least 25 percent of the funding available for waste tire grants is distributed equally to each county having a population fewer than 100,000. Of the remaining funds distributed to counties having a population of 100,000 or greater, the department shall distribute those funds on the basis of population.~~

~~(3) From the funds made available pursuant to s. 403.709(1)(e) for the grant program created by this section, the following distributions shall be made:~~

~~(a) Up to 50 percent for the program described in subsection (1); and~~

~~(b) Up to 50 percent for the program described in subsection (2).~~

(2)~~(4)~~ The department may adopt rules necessary to administer this section, including, but not limited to, rules governing timeframes for submitting grant applications, criteria for prioritizing, matching criteria, maximum grant amounts, and allocation of appropriated funds based upon project and applicant size.

~~(5) Notwithstanding any other provision of this section, and for the 2014-2015 fiscal year only, the Department of Environmental Protection shall award the sum of $3 million in grants equally to counties having populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs. This subsection~~

~~expires July 1, 2015.~~

Section 3. For the purpose of incorporating the amendments made by this act to section 403.7095, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 403.413, Florida Statutes, is reenacted to read:

403.413 Florida Litter Law.—

(6) PENALTIES; ENFORCEMENT.—

(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes is guilty of a noncriminal infraction, punishable by a civil penalty of $100, from which $50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

Section 4. For the purpose of incorporating the amendments made by this act to section 403.7095, Florida Statutes, in a reference thereto, paragraph (h) of subsection (5) of section 403.7032, Florida Statutes, is reenacted to read:

403.7032 Recycling.—

(5) The Department of Environmental Protection shall create the Recycling Business Assistance Center by December 1, 2010. In carrying out its duties under this subsection, the department shall consult with state agency personnel appointed to serve as economic development liaisons under s. 288.021 and seek technical assistance from Enterprise Florida, Inc., to ensure the Recycling Business Assistance Center is positioned to succeed. The purpose of the center shall be to serve as the

mechanism for coordination among state agencies and the private sector in order to coordinate policy and overall strategic planning for developing new markets and expanding and enhancing existing markets for recyclable materials in this state, other states, and foreign countries. The duties of the center must include, at a minimum:

(h) Providing evaluation of solid waste management grants, pursuant to s. 403.7095, to reduce the flow of solid waste to disposal facilities and encourage the sustainable recovery of materials from Florida's waste stream.

Section 5. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 922
Bill Number (if applicable)

Topic Solid Waste

Amendment Barcode (if applicable)

Name Andrew Kitchel

Job Title Director of Legislative Affairs - FL DEP

Address 3900 Commonwealth Blvd
Street

Phone

Tallahassee FL 32303
City *State* *Zip*

Email

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing DEP

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	CS/SB 966
INTRODUCER:	Banking and Insurance Committee; and Senators Benacquisto and Gaetz
SUBJECT:	Unclaimed Property
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Favorable**
3.	Betta	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 966 requires life insurers to determine whether their life or endowment insurance policyholders, annuitants, and retained asset account holders have died by annually comparing them against the United States Social Security Administration Death Master File (DMF). The requirement applies to all life or endowment insurance policies, annuity contracts, and retained asset accounts that were in force on or after January 1, 1992. If a death is indicated, the bill requires the insurer to verify the death, verify if the deceased had other products with the company, determine if benefits are due, and attempt to locate and contact beneficiaries. If the policy or contract proceeds remain unclaimed five years after the date of death of the insured, annuitant, or account holder, the property escheats to the state as unclaimed property. Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the Department of Financial Services (DFS) Bureau of Unclaimed Property no later than May 1, 2021.

The bill applies to all life insurers requirements agreed to by many of the largest life insurers in settlement agreements with the DFS, the Office of the Attorney General, and the Office of Insurance Regulation (OIR), often as part of multi-state settlement agreements. The settlement agreements are related to examinations that often find insurers use information from the Social Security Administration's Death Master File to stop paying a deceased person's annuity, but do not use such information to search for beneficiaries of a life insurance policy. According to the OIR, these settlement agreements have resulted in the return of over $5 billion to beneficiaries

directly by the companies nationwide and over $2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The bill is effective upon becoming law.

The bill is estimated to have a positive fiscal impact to the state. According to the Office of Insurance Regulation, remittances "far exceeding $100 million" are expected by May 1, 2021, as a result of this bill.

II. Present Situation:

Life Insurance

Life insurance is the insurance of human lives.[1] Life insurance is generally purchased to ensure the financial security of the beneficiaries of the policy in the event the insured dies. The two most common types of life insurance are whole life insurance and term life insurance. A whole life insurance policy provides coverage for the life of the policyholder and pays a death benefit when the policyholder dies, regardless of his or her age, or on the maturity date.[2] A term life insurance policy provides coverage for a specific time period and only pays a benefit if the policyholder dies during the term of the policy. There exist a wide array of life insurance policies that provide options to consumers to create flexible death benefits, flexible premium amounts, allow policyholders investment control of the cash value of the policy at variable rates of return, and more.

Endowment Insurance Policies

An endowment insurance policy provides for the payment of the face of the policy at the end a fixed term of years. As noted by the Department of Financial Services (DFS), a whole life policy is actually an endowment at a limiting age of 100.[3] As with the whole life policy, endowment policies provide insurance protection against the economic loss of a premature death. Common endowment terms are five, ten, and twenty years, or to a stated age, such as 65. If the insured is living at the end of the endowment term, the insurance company will pay the face amount of the policy.

Annuities

An annuity is a form of life insurance contract between a consumer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer. In return, the insurer agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. Annuities are often used for retirement planning because they provide a guaranteed source of income for future years. Annuities are available in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum

[1] Section 624.602, F.S.
[2] The maturity date for a life insurance policy often is when a policyholder turns 100 years old, but some policies have a later maturity date.
[3] Florida Department of Financial Services Division of Consumer Services, Life Insurance Overview, http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm (click on link for types of policies)(last visited January 8, 2015).

payment in exchange for immediate and regular periodic payments, which may be for a lifetime. For a deferred annuity, premiums are usually either paid in a lump sum or through a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows tax-deferred. An annuity may or may not have a death benefit upon the death of the annuitant, based on the payment plan of the annuity. In a "life only" annuity, payments are only made until the death of the annuitant while in a fixed period annuity payments are made for a fixed number of years certain regardless of whether the annuitant dies during the years certain. Many life insurers regularly seek to verify whether an annuitant has died by searching the Social Security Administration Death Master File.

Retained Asset Accounts

A retained asset account is an account that may be used to settle a death claim.[4] Generally, a beneficiary establishes a retained asset account to deposit the proceeds into an interest bearing account so that the beneficiary may consider investment options and other possible uses of the money. Generally, the beneficiary can choose to withdraw money from the account in a single "lump sum" payment or via installments, or may choose to only receive interest payments with any remaining money at the beneficiary's death passing on to his or her beneficiaries.

Florida Disposition of Unclaimed Property Act

In 1987, the Florida Legislature adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (chapter 717, F.S., the Act).[5] The Act defines unclaimed property as any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.[6] The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the DFS Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or

[4] National Association of Insurance Commissioners, *Retained Asset Accounts and Life Insurance: What Consumers Need to Know About Life Insurance Benefit Payment Options*, http://www.naic.org/documents/consumer_alert_raa.htm (January 8, 2016).
[5] Ch. 87-105, L.O.F. *See also* UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act (Last visited March 26, 2014)
[6] ss. 717.104 – 717.116, F.S.

distributable, unless otherwise provided in the Act.[7] Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate the apparent owners within 180 days after an account becomes inactive.[8] Once this search period expires, holders must file an annual report with the DFS for all property, valued at $50 or more, that is presumed unclaimed for the preceding year.[9] The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.[10]

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.[11] The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.[12] The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department must deliver or pay to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.[13]

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.[14] The DFS is allowed to retain up to $15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Fund.[15]

Like many other state unclaimed property programs, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property but instead obtains its custody and beneficial use pending identification of the property owner.[16]

Unclaimed Property Owing Under Life Insurance Policies

The Act provides that funds held or owing under a life or endowment insurance policy or an annuity contract that has matured or terminated are presumed unclaimed if unclaimed for more

[7] s. 717.102(1), F.S.
[8] s. 717.117(4), F.S.
[9] s. 717.117, F.S.
[10] s. 717.119, F.S.
[11] s. 717.1201, F.S.
[12] ss. 717.117 and 717.124, F.S.
[13] s. 717.124, F.S.
[14] s. 717.123, F.S.
[15] Id.
[16] Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.

than five years[17] after the funds became due and payable as established by records of the insurance company owing the funds.[18]

Section 627.461, F.S., requires that every contract of insurance provide that, when a policy becomes a claim upon the death of the insured, settlement of the policy shall be made upon receipt of due proof of death and surrender of the policy. Accordingly, life insurance policies and annuities contracts with death benefits issued under Florida law have contractual terms that provide that the policy matures upon the insurer receiving actual proof of death, generally in the form of a certified copy of the death certificate.

Regulatory Examination of Life Settlement Claim Practices

According to the Office of Insurance Regulation, a 2009 Florida market conduct investigation revealed that some life insurance companies were using information from the Social Security Administration's Death Master File to stop paying a deceased person's annuity, but were not using such information to search for beneficiaries of a life insurance policy. Because insurers were not using information to find beneficiaries, the practice sometimes resulted in continued payment deductions from the accounts of deceased policyholders for the payment of premiums.[19]

Often, claims are not made by the beneficiaries of life insurance policies because the beneficiary is unaware of the policy. Additionally, insurers generally did not remit the benefits under life insurance policies and annuities with a death benefit to the Bureau of Unclaimed Property unless the insured attained, or would have attained, the limiting age on an at-force policy, which for most policies is 100 years of age or greater.

In May 2011, insurance regulators from a number of states, including Florida, established a special task force to coordinate regulatory investigations of the claim settlement practices of life insurance companies. In particular, the task force focused on the allegations that many of the insurers were using the DMF to terminate payments under annuity contracts, but failed to use this information to facilitate claims payments on life insurance policies.[20] Kevin McCarty, the Director of the Florida Office of Insurance Regulation, has served as the chair of the task force since its inception. Currently, 22 of the top 40 nationally significant groups writing policies have reached settlements or concluded an examination.[21]

[17] If the insured attains the limiting age under an in-force policy or would have done so if alive, the funds are deemed unclaimed if unclaimed for 2 years.
[18] s. 717.107(1), F.S.
[19] Florida Department of Financial Services Division of Consumer Services, Life Insurance Settlement Information, http://www.myfloridacfo.com/Division/Consumers/FAQ/FAQ.htm (click on hyperlink for John Hancock Life Insurance)(last visited January 8, 2016).
[20] National Association of Insurance Commissioners, *News Release: Regulators to Review Life Insurance Payment Practices*, (May 17, 2011)(last visited January 8, 2016).
[21] Florida Office of Insurance Regulation, *Top 40 Nationally Significant Groups Writing Driect Life, Annuity and Other Considerations*, http://www.floir.com/siteDocuments/Top40LifeGroups.pdf (last visited January 8, 2016).

Life Insurance Claim Settlement Practices

Florida has entered into a number of settlement agreements with 20 life insurers from 2011 to the present, often as part of multi-state settlement agreements.[22] Participants in the examination and settlement process have included Chief Financial Officer Jeff Atwater through the Bureau of Unclaimed Property at the Department of Financial Services, Attorney General Pam Bondi through the Office of the Attorney General, and the Office of Insurance Regulation (OIR). According to the OIR, these life claim settlement agreements have resulted in the return of over $5 billion to beneficiaries directly by the companies and over $2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The settlements generally require the life insurer to compare all the life insureds listed in company records against the DMF.[23] For all policies the company obtains notice of the death of the insured through the DMF search or company records, it must conduct a thorough search for the beneficiaries. If a life insurance beneficiary contacts the insurer, the company must provide claims forms and instructions for the making of a claim. The insurers retain the right to require a death certificate as proof of death before paying proceeds to a beneficiary. If the company cannot locate the beneficiary, the insurer must remit the proceeds as unclaimed property within five years of the date of the death of the life insurance policyholder. The settlement agreements also establish business practices to facilitate payments to owners of assets under annuity contracts and retained asset accounts.

Social Security Administration Death Master File

The Social Security Administration (SSA) collects death information to administer its programs.[24] The SSA receives death reports from many sources, including family members, funeral homes, financial institutions, postal authorities, States and other Federal agencies. The information is then compiled in the Death Master File (DMF). The DMF is actually a subset of the death information on the Numerical Identification System (Numident). Numident is the SSA electronic database that contains the records of Social Security Numbers assigned to individuals since 1936. The DMF includes the deceased individual's social security number, first name, middle name, last name, date of birth, and date of death.

There are two versions of the DMF. The full file contains all death records extracted from the Numident database, including death data received from the States and is shared only with certain Federal and State agencies pursuant to section 205(r) of the Social Security Act. The limited access public file contains death records extracted from the Numident database, but does not include death data received from the States. The public file is available through the Department of Commerce's National Technical Information Service, a clearinghouse for government information, which sells it to the public. Access to the DMF is restricted and requires users to

[22] Office of Insurance Regulation, *Life Claim Settlement Practices*, http://www.floir.com/Sections/LandH/life_claims_settlement_practices_hearing05192011.aspx (last visited January 8, 2016).
[23] See Florida Office of Insurance Regulation, *Florida's Regulatory Life Claim Settlement Agreements*, http://www.floir.com/siteDocuments/LifeClaimsSettlements.pdf (follow hyperlinks to regulatory settlement agreements)(last visited January 8, 2016).
[24] Social Security Administration, *Requesting the Death Master File*, https://www.ssa.gov/dataexchange/request_dmf.html (last visited January 7, 2016).

have a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty. Further, any party accessing the DMF must certify it has systems, facilities, and procedures to safeguard the information in the DMF and has experience in maintaining the confidentiality, security, and appropriate use of such information.

Thrivent Financial for Lutherans v. State of Florida

The 2014 decision of the Florida District Court of Appeal for the First District resolved a dispute between the DFS and Thrivent Financial for Lutherans (Thrivent) as to when funds under a life insurance or endowment insurance policy or annuity contract become due and payable, thus triggering the start of the dormancy period that results in the funds being remitted to the DFS as unclaimed property after the dormancy period ends.[25] Thrivent had appealed a DFS declaratory statement finding that life insurance funds are "due and payable" under s. 717.107(1), F.S., upon the death of the insured, at which time the dormancy period is automatically triggered. The DFS declaratory statement interpreting the statute also opined that s. 717.107, F.S., created an affirmative duty on insurer to search databases, such as the DMF, to determine if any of its insureds has died.

The Court found the DFS declaratory statement interpreting s. 717.107(1), F.S., invalid because it incorrectly interpreted the statute. The Court noted that under s. 717.107(1), F.S., life insurance funds "become due and payable as established by the records of the insurance company." Because s. 627.461, F.S., requires each life insurance contract to provide that payment "shall be made upon receipt of due proof of death and surrender of the policy" the records of the insurer do not establish funds as due and payable under s. 717.107(1), F.S., until the insurer receives proof of death and surrender of the policy. The Court noted subsection (3) of the statute provides that contracts "not matured by actual proof of the death of the insured or the annuitant" according to company records are deemed matured and the proceeds are due and payable if the company knows the insured or annuitant has died or the insured has attained the limiting age. The Court reasoned that to interpret subsection (1) to make policy proceeds due and payable once the insured dies would render meaningless subsection (3). The Court also refused to impose an affirmative duty on insurers to search death records in order to determine whether any insured has died. The Court noted that the plain language of s. 717.107, F.S., does not impose such a duty and refused to rewrite the statute based on policy consideration, instead noting that policy concerns "must be addressed by the Legislature."

III. Effect of Proposed Changes:

Section 1 amends s. 717.107, F.S., of the Florida Disposition of Unclaimed Property Act to establish that funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than five years after the date of death of the insured, annuitant, or retained asset account holder. Under current law, such funds are presumed unclaimed if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding the funds. The decision in *Thrivent Insurance for Lutherans v. State of Florida, Department of Financial Services,* (Thrivent decision) established that under current law, funds

[25] *Thrivent Financial for Lutherans v. State of Florida, Department of Financial Services*, 145 So.3d 178 (Fla. 1st DCA 2014).

are not due and payable as established from the records of the insurance company until the company receives a certified copy of a death certificate as required by the contract terms of the policy and s. 627.461, F.S.

The bill requires insurers to at least annually perform a comparison of its insureds against the United States Social Security Administration Death Master File (DMF). The comparison must be performed for all the insurer's policyholders under life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The Thrivent decision found that currently the DFS lacks the authority to require such a search under s. 717.107, F.S. The annual comparison must be made before August 31 of each year. Additionally, if the insurer makes a comparison of its annuity policyholders against the DMF more frequently than once a year, the insurer must perform the DMF comparison required by this bill as frequently. An insurer may perform the comparison using any database or service that the DFS determines is at least as comprehensive as the DMF for the purpose of indicating a person has died.

The bill establishes that an insured, annuitant, or retained asset account holder is presumed deceased if that person's date of death is indicated on the DMF, unless the insurer has in its records competent, substantial evidence that the person is living. The insurer is required to account for common variations in data and for partial names, social security numbers, dates of birth, and addresses which would otherwise preclude an exact match.

The following are exempted from the bill's requirements:

- An annuity issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) or that is issued to fund an employment-based retirement plan, including any deferred compensation plan.
- A policy of credit life or accidental death insurance.
- A joint and survivor annuity contract, if an annuitant is still living.
- A policy issued to a group master policy owner for which the insurer does not perform recordkeeping functions that provide the insurer with access to, for each individual insured, the social security number or name and date of birth, beneficiary designation information, coverage eligibility, the benefit amount, and premium payment status.

The bill requires an insurer, no later than 120 days after learning of a death through a DMF match, to complete and document an effort to confirm the death of the insured, annuitant, or retained asset account holder. The insurer must review its records to determine if that person purchased other products from the insurer. The insurer must also determine whether benefits are due. Finally, the insurer must complete and document an effort to locate and contact the beneficiary or authorized representative unless such person communicates with the insurer before the expiration of the 120-day period. The effort to locate the beneficiary or authorized representative must include sending that person information concerning the insurer's claim process, including notice of any requirement in a policy, annuity, or retained asset account to provide a certified original or copy of the death certificate.

Insurers and their agents or third parties may not charge insureds, annuity owners, retained asset account holders, and beneficiaries' fees or costs associated with any search, verification, claim or delivery of funds pursuant to the requirements of s. 717.107, F.S.

Section 2 of the bill states that the bill is remedial and applies retroactively. The retroactive application of the bill evidences legislative intent to apply the bill to policies, contracts and accounts entered into, prior to the effective date of the bill.

Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the DFS no later than May 1, 2021. The prohibition against fines, penalties and additional interest is designed to provide insurers five years to comply with the requirements of the bill before being subject to such sanctions.

Section 3 provides that the act is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions of CS/SB 966 are applied to life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The bill expresses clear intent to apply retroactively, thus constitutional concerns are raised if the statute impairs vested rights, creates new obligations, or imposes new penalties.[26] A vested right is more than a mere expectation based on an anticipation of the continuance of an existing law. It must be an immediate, fixed right of present or future enjoyment.[27] If, however, the statute is remedial in nature and expresses clear intent to apply retroactively, it does not raise constitutional concerns. Remedial statutes are those that do not create new or take away vested rights.[28]

Representatives of some life insurers argue that the application of the bill's requirements to life insurance policies with contractual terms that require proof of death in accordance with s. 627.461, F.S., could raise constitutional issues related to the impairment of contracts. Representatives from the Department of Financial Services counter such

[26] *R.A.M. of South Florida, Inc., v. WCI Communities, Inc.*, 869 So.2d 1210, 1216 (Fla. 2nd DCA 2004).
[27] *Florida Hosp. Waterman, Inc. v. Buster*, 948 So.2d 478, 490 (Fla. 2008).
[28] *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

concerns, pointing to the United States Supreme Court decision in *Connecticut Mutual Life Insurance Co. v. Moore*[29] (*Moore*).

In *Moore*, the Court addressed the validity of the New York unclaimed property statute as applied to life insurance policies, including "policies payable on death in which the insured has died and no claim by the person entitled thereto has been made for seven years."[30] The Court addressed whether the unclaimed property statute impaired the obligation of contract within the meaning of Art. I, S. 10 of the United States Constitution.[31] The insurers argued that the terms of the insurance policies provided the insurer has no obligation until proof of death is submitted and the policy is surrendered. The unclaimed property statute, the insurers further argued, transforms a conditional obligation under the life insurance policy into a liquidated obligation.[32]

The Supreme Court held that the New York statute did not violate the constitution because of its enforced variations from the insurance policy provisions.[33] The Court reasoned that the state has the same power to seize abandoned life insurance moneys as abandoned bank deposits, despite the differences between the two. The Court concluded by saying it saw no constitutional reason why a state may not proceed administratively to take over the care of unclaimed property, noting that the right of appropriation by the state of abandoned property has existed for centuries in the common law.[34]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 966, many beneficiaries of life or endowment insurance policies and annuities contracts who are unaware of such policies will benefit by claiming benefits after being contacted by a life insurer. If the life insurer remits the funds held or owing under the policy or contract to the DFS, Bureau of Unclaimed Property, beneficiaries will benefit by having a central location with which to search for possible life insurance proceeds.

Life insurers will incur indeterminate costs related to identifying policies and contracts subject to the provisions of the bill, conducting searches of the DMF to identify deceased policyholders, and attempting to locate beneficiaries.

[29] 333 U.S. 541 (1948).
[30] *Moore*, 333 U.S. 541 at 543.
[31] *Moore*, 333 U.S. 541 at 545.
[32] *Moore*, 333 U.S. 541 at 546.
[33] *Moore*, 333 U.S. 541 at 546.
[34] *Moore*, 333 U.S. 541 at 547.

C. Government Sector Impact:

The Department of Financial Services indicates that the Bureau of Unclaimed Property expects to receive reports and remittances "far exceeding $100 million" as insurers are unable to pay beneficiaries after searching the DMF and performing due diligence searches for beneficiaries. The DFS did not project remittance amounts to the state for the coming fiscal years because the bill specifies that insurers will not be subject to fines, penalties or additional interest related to the remittance of unclaimed proceeds on policies and contracts where the insured had died prior to the dormancy trigger time period (generally five years) expiring.

The department further indicates a potential for unknown litigation expenses if insurance companies challenge the law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 717.107 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 19, 2016:
The CS requires insurers, within 120 days after learning of the death of an insured, annuitant, or retained asset account holder, to complete an effort to confirm the death, review its records to determine if the person has other products from the insurer, determine, whether benefits are due, and complete an effort to locate and contract a beneficiary that has not contacted the insurer. The effort must include providing information regarding the claim process and the requirements for submitting a claim.

The CS also:

- Exempts from the bill credit life policies and joint and survivor annuities where an annuitant is still living.
- Allows insurers to disclose minimal personal information about an insured, annuitant, or account holder to outside parties in an effort to locate a beneficiary, to the extent allowed by law.
- Allows the insurer to use an alternate database or service that DFS determines is at least as comprehensive as the Death Master File for purposes of indicating a person has died.

- Clarifies that an insurer may use competent, substantial evidence to show that a person presumed dead by the Death Master File is actually alive.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senators Benacquisto and Gaetz

597-02310-16 2016966c1

A bill to be entitled

An act relating to unclaimed property; amending s. 717.107, F.S.; revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; revising a condition of when certain insurance policies or annuity contracts are deemed matured and the proceeds are due and payable; requiring an insurer to compare records of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File or a certain database or service to determine if a death is indicated; providing requirements for the comparison; providing for a presumption of death for certain individuals; providing an exception; requiring an insurer to account for certain variations in data and partial information; providing the circumstances under which a policy, a contract, or an account is deemed to be in force; providing applicability; defining a term; requiring an insurer to follow certain procedures after learning of a death through a specified comparison; authorizing an insurer to disclose certain personal information to specified persons for certain purposes; prohibiting an insurer and specified entities from charging fees and costs associated with certain activities; conforming provisions to changes made by the act; providing retroactive applicability; providing an effective date.

597-02310-16 2016966c1

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

Section 1. Section 717.107, Florida Statutes, is amended to read:

717.107 Funds owing under life insurance policies, annuity contracts, and retained asset accounts; fines, penalties, and interest; United States Social Security Administration Death Master File.—

(1) Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder ~~funds became due and payable as established from the records of the insurance company holding or owing the funds~~, but property described in paragraph (3)(d) ~~(3)(b)~~ is presumed unclaimed if such property is not claimed for more than 2 years. The amount presumed unclaimed shall include any amount due and payable under s. 627.4615.

(2) If a person other than the insured, ~~or~~ annuitant, or retained asset account holder is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the ~~or~~ annuitant, or the retained asset account holder according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof

of the death of the insured, the ~~or~~ annuitant, or the retained asset account holder according to the records of the company is deemed matured and the proceeds due and payable if any of the following applies:

(a) The company knows that the insured, the ~~or~~ annuitant, or the retained asset account holder has died.~~; or~~

(b) A presumption of death made in accordance with paragraph (8)(b) has not been rebutted.

(c) The policy or contract has reached its maturity date.

(d)~~(b)~~1. The insured has attained, or would have attained if he or she were living, the limiting age under the mortality table on which the reserve is based;

2. The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph 1.; and

3. Neither the insured nor any other person appearing to have an interest in the policy within the preceding 2 years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy; subjected the policy to a loan; corresponded in writing with the company concerning the policy; or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent the policy from being matured or terminated under subsection (1) if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof

before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the company learns of the death of the insured, the ~~or~~ annuitant, or the retained asset account holder and the beneficiary has not communicated with the insurer within 4 months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing 2 years after July 1, 1987, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class.

(b) The address of each beneficiary.

(c) The relationship of each beneficiary to the insured.

(8)(a) Notwithstanding any other provision of law, an insurer shall compare the records of its insureds' life or

endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992, against the United States Social Security Administration Death Master File to determine if the death of an insured, an annuitant, or a retained asset account holder is indicated. The comparison must use the name and social security number or date of birth of the insured, annuitant, or retained asset account holder. The comparison must be made on at least an annual basis before August 31 of each year. If an insurer performs such a comparison regarding its annuities or other books of business more frequently than once a year, the insurer must also make a comparison regarding its life insurance policies, annuity contracts that provide a death benefit, and retained asset accounts at the same frequency as is made regarding its annuities or other books or lines of business. An insurer may perform the comparison required by this paragraph using any database or service that the department determines is at least as comprehensive as the United States Social Security Administration Death Master File for the purpose of indicating that a person has died.

(b) An insured, an annuitant, or a retained asset account holder is presumed deceased if the date of his or her death is indicated by the comparison required under paragraph (a), unless the insurer has in its records competent and substantial evidence that the person is living, including, but not limited to, a contact made by the insurer with such person or his or her legal representative. The insurer shall account for common variations in data and for any partial names, social security numbers, dates of birth, and addresses of the insured, the

annuitant, or the retained asset account holder which would otherwise preclude an exact match.

(c) For purposes of this section, a policy, an annuity contract, or a retained asset account is deemed to be in force if it has not lapsed, has not been cancelled, or has not been terminated at the time of death of the insured, the annuitant, or the retained asset account holder.

(d) This subsection does not apply to an insurer with respect to benefits payable under:

1. An annuity that is issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 or that is issued to fund an employment-based retirement plan, including any deferred compensation plan.

2. A policy of credit life or accidental death insurance.

3. A joint and survivor annuity contract, if an annuitant is still living.

4. A policy issued to a group master policy owner for which the insurer does not perform recordkeeping functions. As used in this subparagraph, the term “recordkeeping” means those circumstances under which the insurer has agreed through a group policyholder to be responsible for obtaining, maintaining, and administering, in its own or its agents’ systems, information about each individual insured under a group insurance policy or a line of coverage thereunder, including at least the following:

a. The social security number, or name and date of birth;

b. Beneficiary designation information;

c. Coverage eligibility;

d. The benefit amount; and

e. Premium payment status.

(9) No later than 120 days after learning of the death of an insured, an annuitant, or a retained asset account holder through a comparison under subsection (8), an insurer shall:

(a) Complete and document an effort to confirm the death of the insured, annuitant, or retained asset account holder against other available records and information.

(b) Review its records to determine whether the insured, annuitant, or retained asset account holder purchased other products from the insurer.

(c) Determine whether benefits may be due under a policy, an annuity, or a retained asset account.

(d) Complete and document an effort to locate and contact the beneficiary or authorized representative under a policy, an annuity, or a retained asset account, if such person has not communicated with the insurer before the expiration of the 120-day period. The effort must include:

1. Sending to the beneficiary or authorized representative information concerning the claim process of the insurer.

2. Notice of any requirement to provide a certified original or copy of the death certificate, if applicable under the policy, annuity, or retained asset account.

(10) An insurer may, to the extent permitted by law, disclose the minimum necessary personal information about an insured, an annuitant, a retained asset account owner, or a beneficiary to an individual or entity reasonably believed by the insurer to possess the ability to assist the insurer in locating the beneficiary or another individual or entity that is entitled to payment of the claim proceeds.

(11) An insurer, or any agent or third party that it

engages or that works on its behalf, may not charge insureds, annuitants, retained asset account holders, beneficiaries, or the estates of insureds, annuitants, retained asset account holders, or the beneficiaries of an estate any fees or costs associated with any search, verification, claim, or delivery of funds conducted pursuant to this section.

Section 2. The amendments made by this act are remedial in nature and apply retroactively. Fines, penalties, or additional interest may not be imposed due to the failure to report and remit an unclaimed life or an endowment insurance policy, a retained asset account, or an annuity contract with a death benefit if any unclaimed life or endowment insurance policy, retained asset account, or annuity contract proceeds are reported and remitted to the Department of Financial Services on or before May 1, 2021.

Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR LIZBETH BENACQUISTO
30th District

February 11, 2016

The Honorable Tom Lee
Appropriations, Chair
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 966- Unclaimed Property

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 966, Relating to Unclaimed Property, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto
Senate District 30

Cc: Cindy Kynoch

REPLY TO:
❒ 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

SB 966
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Unclaimed Property

Name Belinda H. Miller

Job Title Chief of Staff

Address 200 E. Gaines Street
Street

Tallahassee FL 32399
City State Zip

Phone 850 413-5000

Email belinda.miller@floir.com

Speaking: [X] For [ ] Against [X] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Office of Insurance Regulation

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016
Meeting Date

SB 966
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Unclaimed Property

Name Elizabeth Boyd

Job Title Director of Legislative Affairs

Address 400 N Monroe Street
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 850-413-2863

Email elizabeth.boyd@myfloridacfo.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	PCS/CS/SB 992 (841824)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Brandes
SUBJECT:	Department of Financial Services
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.	Betta	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 992 makes various changes to statutes relating to the Department of Financial Services (DFS or the department).

Current law requires plaintiffs to serve lawsuits on insurance companies by serving documents initiating the lawsuit at the department. These documents are sent to the DFS by mail or by process server. The bill allows the DFS to create a system for electronic service of process and create an internet-based system for distributing documents to insurance companies.

The Chief Financial Officer (CFO) is designated the State Fire Marshal. The CFO administers the state fire code and the certification of firefighters. This bill provides for expiration of firefighter certifications after four years and provides a renewal process. It provides additional grounds that the State Fire Marshal can suspend, revoke, or deny an application for certification. The bill creates a procedure for an applicant for firefighter certification with a criminal record or dishonorable discharge from the United States Armed Forces to obtain a certificate if they can demonstrate by clear and convincing evidence that they do not pose a risk to persons or property.

The bill creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments. The program will provide financial assistance to improve firefighter safety and

enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The bill provides that employees of the state university system, a special district, or a water management district can participate in the deferred compensation program for state employees administered by the department.

This bill amends the Florida Single Audit Act to raise the audit threshold from $500,000 to $750,000 to conform to the federal single audit act. It reorganizes the statute to place the provisions relating to higher education entities in one section.

The bill provides that a licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

The bill authorizes the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association's regular membership but does not provide for nominations.

The department administers the sinkhole neutral evaluation program for the resolution of disputed sinkhole insurance claims. This bill amends the qualifications of the neutral evaluator to provide that one cannot serve as a neutral evaluator on a claim if the individual was employed, within the previous five years, by the firm that did the initial sinkhole testing.

The bill allows the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code. This will allow, for example, the DFS' Division of Agent and Agency Services access to photographs to aid in the investigation of insurance agents.

The bill amends the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.

The bill provides cost savings to the state, estimated to be $54,500, due to the changes in the service of process. The bill appropriates the recurring sum of $500,000 and one position to support the Volunteer Firefighter Assistance Grant Program from the Insurance Regulatory Trust Fund.

II. Present Situation:

Service of Process on the Chief Financial Officer

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Section 48.151, F.S., provides that the Chief Financial Officer ("CFO") is the agent for service of process for:

- All insurers applying for authority to transact insurance;
- All licensed nonresident insurance agents;

- All nonresident disability insurance agents;
- Any unauthorized insurer under s. 626.906 or s. 626.937, F.S.;
- All domestic reciprocal insurers;
- All fraternal benefit societies;
- All warranty associations;
- All prepaid limited health service organizations; under chapter 636; and
- All persons required to file statements under s. 628.461, F.S.[1]

All persons or entities for which the CFO is the agent for service of process must designate an individual to receive documents served on DFS. In order to serve process on an insurance company or other entity for which the CFO is the agent, a plaintiff must mail the summons and other documents to the DFS or serve the documents at the DFS by personal service at the DFS Tallahassee office. The plaintiff must pay a $15 fee to the DFS for service.[2] The CFO cannot accept service via electronic mail.[3]

Once the DFS receives the documents, it forwards them to the insurer or entity.[4] The CFO can use registered or certified mail to send the documents to authorized insurers.[5] The CFO can use registered mail to send the documents to unauthorized insurers.[6] Section 624.307, F.S., also allows the CFO to use certified mail, registered mail, or other verifiable means to serve regulated entities.

According to representatives of the DFS, many law firms are creating and filing documents in court electronically but must print and send paper copies to the DFS. The DFS believes it could improve efficiency if plaintiffs were allowed to serve DFS electronically.[7]

Alternative Retirement Benefits for OPS Employees

Section 110.1315, F.S., requires that upon review and approval by the Executive Office of the Governor, the DFS must provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The DFS is allowed to contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code.[8] By creating the program for such employees, the state does not have to contribute to Social Security as an employer.[9] The DFS reports that the program saved the state $11 million in 2013 and 2014.[10]

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[1] *See* s. 48.151(3), F.S.
[2] *See* s. 624.502, F.S.
[3] *See* http://www.myfloridacfo.com/division/legalservices/ServiceofProcess/default.htm (last visited January 13, 2016).
[4] *See* ss. 624.307, 624.423, and 626.907, F.S.
[5] *See* s. 624.423, F.S.
[6] *See* s. 626.907, F.S.
[7] Interview with DFS staff, January 13, 2016.
[8] *See* s. 110.1315(1), F.S.
[9] *See Description of Intended Single Source Purchase*, Department of Financial Services, December 22, 2015 at http://www.myflorida.com/apps/vbs/adoc/F20507_PUR7776DFSTRSS151610.pdf (last visited January 14, 2016).
[10] *Id*.

Florida Deferred Compensation Program

Section 112.215, Florida Statutes, requires the CFO to create a deferred compensation plan for state employees. The plan allows state employees to defer a portion of their income and place it in an investment account. The employee does not pay taxes on the deferred amount or any investment gains until the employee withdraws the money.[11]

Approval of Bonds

Section 137.09, F.S., provides that each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. These bonds must be approved by the board of county commissioners and by the DFS. Section 374.983, F.S., requires each commissioner of the Board of Commissioners of the Florida Inland Navigation District to post a surety bond in the sum of $10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of the office. This bond must be approved by the CFO. The DFS has not been required to approve bonds under either of these statutes in quite some time and believes the requirements are not needed.[12]

Florida Single Audit Act

Section 215.97, F.S., creates the Florida Single Audit Act. The DFS has explained the history and purpose:

> In 1998, the Florida Single Audit Act was enacted to establish state audit and accountability requirements for state financial assistance provided to nonstate entities. The Legislature found that while federal financial assistance passing through the state to nonstate entities was subject to mandatory federal audit requirements, significant amounts of state financial assistance was being provided to nonstate entities that was not subject to audit requirements that paralleled federal audit requirements. Accordingly, it was the intent of the Act that state audit and accountability requirements, to the extent possible, parallel the federal audit requirements.[13]

Each nonstate entity that expends more than $500,000 in state financial assistance[14] in a fiscal year is required to have an audit for that fiscal year. Nonstate entities include local governments, nonprofit organizations, and for-profit organizations.[15]

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[11] *See* https://www.myfloridadeferredcomp.com/SOFWeb/default.aspx (last visited January 14, 2016).
[12] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).
[13] *See* https://apps.fldfs.com/fsaa/singleauditact.aspx (last visited January 14, 2016).
[14] State financial assistance is state resources provided to a nonstate entity to carry out a state project.
[15] *See* s. 215.97(2)(m), F.S.

Section 215.97(8)(o), F.S., provides that contracts involving the State University System or the Florida College System funded by state financial assistance may be in the form of the following:

- A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or
- A combination of the above contract forms.

The DFS reports that because references to higher education entities are spread throughout the Florida Single Audit Act, there is confusion over which provisions apply in various situations.[16]

Driver Licenses Photographs

The Department of Highway Safety and Motor Vehicles maintains digital photographs of licenses pursuant to s. 322.142, F.S. Those photographs are exempt from public disclosure but may be shared with various state agencies to assist the agencies' with their duties. The DFS can obtain such photographs to facilitate the validation of unclaimed property claims and the identification of false or fraudulent claims.[17]

Boiler Regulation

Chapter 554, F.S., is the Florida Boiler Safety Act. The DFS administers the boiler safety code. Section 509.211, F.S., provides that every enclosed room or space that contains a boiler and that is located in a public lodging establishment must be equipped with a carbon monoxide sensor that bears the label of a nationally tested laboratory and complies with the most recent Underwriters Laboratories Standard 2034.[18] The statute provides that the carbon monoxide detector is not necessary if the DFS Division of State Fire Marshal determines the carbon monoxide hazard has been mitigated.[19]

Public Adjusters

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies. The Department of Financial Services (DFS) regulates all types of adjusters.

[16] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).
[17] *See* s. 322.142(4), F.S.
[18] The standard relating to carbon monoxide detectors. *See* http://ulstandards.ul.com/standard/?id=2034 (last visited January 14, 2016).
[19] *See* s. 509.211(4), F.S.

Appointments to the Board of the Florida Surplus Lines Service Office

Section 626.921, F.S., creates the Florida Surplus Lines Service Office (FSLSO). The FSLSO is a self-regulating, nonprofit association for Florida surplus lines agents. The FSLSO's responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.[20] The FSLSO is operated under the supervision of a board of governors consisting of:

- Five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association.
- Two individuals appointed by the DFS, one from each of the two largest domestic agents' associations, each of whom must be licensed surplus lines agents.
- The Insurance Consumer Advocate.
- One individual appointed by the department, who must be a risk manager for a large domestic commercial enterprise.[21]

The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors and claim adjustment companies. The purpose of the association is to encourage an exchange of information among members and to disseminate educational information for the benefit of members and the betterment of the excess and surplus lines industry.[22]

Anti-Fraud Reward Program

Section 626.9892, F.S., creates the Anti-Fraud Reward Program within the DFS funded from the Insurance Regulatory Trust Fund. The program allows the DFS to provide rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons convicted of crimes investigated by the Division of Insurance Fraud. The program was established in 1999 and has paid over $365,000 in rewards.[23]

Neutral Evaluators

Sections 627.707-627.7074, F.S., create requirements for the investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional geologist to conduct testing[24] to determine the cause of the loss if sinkhole loss is covered under the policy.[25] If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.[26]

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[20] *See* s. 626.921(1), F.S.
[21] *See* s. 626.921(4), F.S.
[22] *See* s. http://www.myfsla.com/about/
[23] *See* http://www.myfloridacfo.com/sitePages/agency/dfs.aspx (last accessed February 11, 2015).
[24] s. 627.7072, F.S., contains testing standards in sinkhole claims.
[25] s. 627.707(2), F.S.
[26] s. 627.707(4)(a), F.S.

Neutral evaluation is available to either party if a sinkhole report has been issued.[27] Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs.[28] Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.[29]

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured.[30] A request for neutral evaluation is filed with the DFS. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request.[31] The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization.[32] The report is admissible in subsequent court proceedings.[33] Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

Section 627.7074(7), F.S., provides reasons for which a neutral evaluator may be disqualified:

- A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.
- The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.
- The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.
- The proposed neutral evaluator has, within the preceding five years, worked as an employer or employee of any party to the case.

Provisions Related to the State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the CFO as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the DFS, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.[34] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

[27] s. 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.
[28] s. 627.7074(2), F.S.
[29] s. 627.7074(3), F.S.
[30] s. 627.7074(4), F.S.
[31] s. 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.
[32] ss. 627.7074(5), (12), F.S.
[33] s. 627.7074(13), F.S.
[34] s. 633.104, F.S.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code[35], which contains fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

III. Effect of Proposed Changes:

Service of Process on the Chief Financial Officer (Sections 1, 9, 10, 11, and 13)

This bill provides an alternative means for plaintiffs to serve process on insurers and other regulated persons. The bill allows the DFS to create an internet-based transmission system to accept service of process by electronic transmission of documents. This will allow plaintiffs to serve documents electronically and allow DFS to remove the requirement that paper documents be served.

Once served, the CFO can mail the documents, send them by some other verifiable means, or make them available by electronic transmission to a secure website established by the DFS. Once documents are made available electronically, the CFO must send notice of receipt to the person designated to receive legal process. The notice must state the date and manner in which the copy of process was made available and contain the uniform resource locator for a hyperlink to access files and information on the Department's website to obtain a copy of the process.

Alternative Retirement Benefits for OPS Employees

Section 2 amends s. 110.1315, F.S., to remove the review and approval duties from the Executive Office of the Governor relating to the alternative retirement income security program for temporary and seasonal employees of the state.

Florida Deferred Compensation Program

Section 3 amends s. 112.215, F.S., to provide that persons employed by a state university, special district, or a water management district are eligible to participate in the deferred compensation program established by the CFO. According the DFS, these employees currently participate in the program but the DFS states that clarification is needed.[36]

Approval of Bonds (Sections 4 and 7)

Sections 4 and 7 amend ss. 137.09 and 374.983, F.S., to remove the requirement that the DFS approve bonds for county commissioners and commissioners of the Florida Inland Navigation District. The bonds will still be reviewed by the county boards and by the Florida Inland Navigation District.

[35] *See* http://www.myfloridacfo.com/division/sfm/BFP/FloridaFirePreventionCodePage.htm (last visited January 14, 2016).
[36] *See* Department of Financial Services, *An Act Relating to the Department of Financial Services* White Paper (on file with the Committee on Banking and Insurance).

Florida Single Audit Act (Section 5)

The bill amends the Florida Single Audit Act to raise the audit threshold from $500,000 to $750,000. According to the DFS, the federal single audit threshold was recently raised from $500,000 to $750,000. The bill matches the Florida threshold to the federal threshold. Many entities that receive state financial assistance also receive federal financial assistances. This change prevents an entity from having to comply with different audit thresholds.[37]

The bill creates a new subsection to the Florida Single Audit Act to consolidate the provisions of the Act relating to higher education entities.[38] The bill provides that any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance must comply with s. 215.971(1), F.S., (providing that the contract must include provisions relating to scope of work, deliverables, consequences for nonperformance, and return of unused funds) and s. 216.3475, F.S., (limiting payments to the prevailing rate for services). The contract must be in the form or a combination of the following:

- A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

The bill provides that if a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the contracting requirements of the bill.

The bill does not exempt the higher education entity from compliance with maintaining records concerning state financial assistance and does not exempt the entity from laws that allow access and examination of those records by the state awarding agency, the higher education entity, the DFS, or the Auditor General.

Driver Licenses Photographs (Section 6)

This bill amends s. 322.142, F.S., to allow the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code by licensees and by unlicensed persons. For example, this will allow the DFS' Division of Agent and Agency Services to access photographs to aid in the investigation of insurance agents.[39]

Boiler Regulation (Section 8)

This bill amends s. 509.211, F.S., to remove the reference to a "nationally recognized testing laboratory." It requires the carbon monoxide detector to be listed complying with ANSI/UL

[37] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).
[38] The bill defines "higher education entity" as a Florida College System institution or a state university.
[39] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

2075, Standard for Gas and Vapor Detectors and Sensors by a nationally recognized testing laboratory accredited by the Occupational Safety and Health Administration. The bill requires that the detectors either be integrated to the establishment's fire detection system or connected to the boiler safety circuit such that the boiler does not operate when carbon monoxide is detected.

The bill removes the ability of the Division of State Fire Marshal to determine that some other method has adequately mitigated the risk. It requires the carbon monoxide detectors to meet the statutory requirements.

Public Adjusters (Section 12)

The bill provides that a licensed health insurance agent is not defined as a public adjuster in certain situations. A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

Appointments to the Board of the FSLSO (Section 14)

The bill requires that the five members of the Florida Surplus Lines Association regular membership appointed to the FSLSO board of governors must be individuals nominated by the Florida Surplus Lines Association.

Anti-Fraud Reward Program (Section 15)

The bill allows the DFS to give rewards under the Anti-Fraud Reward Program to persons who provide information leading to the arrest and conviction of persons who violate statutes currently investigated by the State Fire Marshal. Crimes include making false reports regarding explosives or arson (s. 790.164, F.S.), planting a "hoax" bomb (s. 790.165, F.S.), crimes related to weapons of mass destruction (s. 790.166, F.S.), arson resulting in injury to a firefighter (s. 806.031, F.S.), preventing extinguishment of a fire (s. 806.10, F.S.), crimes relating to fire bombs (s. 806.111), and burning to defraud an insurer (s. 817.233, F.S.).

Neutral Evaluators (Section 16)

The bill provides that a proposed neutral evaluator is disqualified if he or she has, within the preceding five years, worked for the entity that performed the initial sinkhole testing required by s. 627.7072, F.S.

Provisions Related to the State Fire Marshal (Sections 17-24, 26)

Criminal Records of Applicants for Certification

Section 633.412, F.S., provides that a person applying for certification as a firefighter must not have been convicted of a felony, a misdemeanor relating to the certification, a misdemeanor relating to perjury or false statements, or have been dishonorably discharged from the Armed Forces of the United States. Section 15 of the bill creates s. 633.107, F.S., to give the DFS the discretion to grant certificates to some applicants with criminal records if certain conditions are met. The applicant must have paid in full any fee, fine, fund, lien, civil judgment, restitution, cost

of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense. In addition, at least five years must have elapsed since the applicant completed or was released from confinement, supervision, or nonmonetary conditions imposed by the court for a disqualifying offense or at least five years must have elapsed since the applicant was dishonorably discharged from the United States Armed Forces. Once those conditions are met, the applicant must demonstrate by clear and convincing evidence that he or she would not pose a risk to persons or property if licensed or certified. Evidence must include:

- Facts and circumstances surrounding the disqualifying offense;
- The time that has elapsed since the offense;
- The nature of the offense and harm caused to the victim;
- The applicant's history before and after the offense; and
- Any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be licensed or certified.

The bill gives the DFS the discretion whether to grant or deny an exemption. The department must provide its decision to deny the exemption in writing and must state with particularity the reasons for denial. The department's decision is subject to proceedings under chapter 120, F.S., except that a formal proceeding under s. 120.57(1), F.S., is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.[40]

Life Safety Code

Section 19 of this bill provides that the provisions of the Life Safety Code, part of the Florida Fire Prevention Code, do not apply to "newly constructed" one and two-family dwellings. One and two-family dwellings are exempt from the Florida Fire Prevention Code and representatives of the DFS are concerned that the statute could lead to confusion.[41]

Firefighter and Volunteer Firefighter Training and Certification

Currently, to work as a firefighter, an individual must hold a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal ("Division").[42] To obtain a firefighter certificate of compliance, an individual must:

- Satisfactorily complete the Minimum Standards Course[43] or have satisfactorily completed training for firefighters in another state which has been determined by the division to be the equivalent of the training required for the Minimum Standards Course.
- Passes the Minimum Standards Course examination.
- Possesses the qualifications in s. 633.412, F.S.:[44]
  - Be a high school graduate
  - Be at least 18 years old
  - Have no felony convictions

[40] The procedure set forth in this bill is similar to the procedure in s. 435.07, F.S., and discussed in *J.D. v. Florida Department of Children and Families*, 114 So.3d 1127 (Fla. 1st DCA 2013).
[41] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).
[42] *See* s. 633.416, F.S.
[43] This course provides the basic fundamental knowledge and skills to function in a fire fighting environment and consists of at least 398 hours. *See* http://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm (last visited January 14, 2016).
[44] *See* s. 633.408(4), F.S.

- Have no misdemeanor convictions relating to the certification or for perjury or false statements
- Be of good moral character
- Be in good physical condition as determined by a division approved physical examination
- Be a nonuser of tobacco or tobacco products for at least year prior to the application

A volunteer firefighter certificate of completion is used for individuals who satisfactorily complete a course established by the division.

Section 21 of the bill requires that an individual seeking a firefighter certificate of compliance must pass the minimum standards course examination within 12 months after completing the required courses. Section 21 also provides that a firefighter certificate of compliance or a volunteer firefighter certificate of completion expires four years after the date of issuance unless renewed.

Section 22 of the bill repeals the requirement of the DFS to suspend or revoke all other certificates an individual holds, if it suspends an individual's certificate.

Retention and Renewal of Certificates

Under current law, s. 633.414, F.S., provides requirements to retain a firefighter certificate of compliance and a volunteer firefighter certificate of completion. In order for a firefighter to retain a certificate of compliance, the firefighter must, every four years:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the division;
- Successfully complete a refresher course consisting of a minimum of 40 hours of training; or
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.

Currently, in order for a volunteer firefighter to retain a volunteer firefighter certificate of completion, the volunteer firefighter must, every four years, be active as a volunteer firefighter or successfully complete a 40 hour refresher course.[45]

Section 23 of the bill requires that the firefighter complete a "Firefighter Retention Refresher Course within six months before the four-year period expires. It further provides that a firefighter or volunteer firefighter certificate expires if the individual does not meet retention requirements. Section 23 provides that the State Fire Marshal may suspend, revoke, or deny a certificate if a reason for denial existed but was not known at the time of issuance, for violations of ch. 633, F.S., or rules or orders of the State Fire Marshal, or falsification of records.

Section 24 of the bill provides that, effective July 1, 2013, an individual who holds a certificate is subject to revocation for:

- A conviction of a misdemeanor relating to the certification or to perjury or false statements;
- A conviction of a felony; or

[45] *See* s. 633.414, F.S.

- A dishonorable discharge from the Armed Forces of the United States.

Firefighter Assistance Grant Program (Section 18)

Section 18 of this bill creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.

The program provides financial assistance to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities. The bill requires the division to administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. The division is required to prioritize the annual award of grants to such fire departments and volunteer fire departments demonstrating need as a result of participating in the Florida Fire Service Needs Assessment Survey.

The bill requires the State Fire Marshal to adopt rules for the program that require grant recipients to:

- Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;
- Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536, F.S.;
- Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and
- Meet the definition of the term "fire service provider" in s. 633.102, F.S.

The bill requires that funds be used to:

- Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division's electronic database;
- Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear; and
- Purchase self-contained breathing apparatus equipment and purchase fire engine pumper apparatus equipment.

Section 26 appropriates $500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

Rulemaking (Section 25)

The bill provides the DFS rulemaking authority relating to unclaimed property to include property reported to the CFO pursuant to s. 43.19, F.S., relating to unclaimed funds paid to the court; s. 45.032, F.S., relating to the disposition of surplus funds after a judicial sale; s. 732.107, F.S., relating to unclaimed funds in intestate probate proceedings; s. 733.816, F.S., relating to unclaimed funds held by personal representatives in probate proceedings; and s. 744.534, F.S., relating to unclaimed funds in guardianship proceedings.

Effective Date (Section 27)

This bill takes effect July 1, 2016.

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:

PCS/CS/SB 992 creates a system for electronic service of process at DFS. This could result in cost savings for plaintiffs who serve documents at the DFS but reduce revenue for process servers who serve pleadings at the DFS office in Tallahassee.

C. Government Sector Impact:

The DFS anticipates a $54,000 per year recurring savings from reduced postage, printing, and information technology costs due to the changes in the service of process statutes in this bill. Future reductions of two or three OPS positions is anticipated.[46]

[46] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

The bill appropriates $500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the newly created Volunteer Firefighter Assistance Grant Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 633.107 and 633.135.

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.1315, 112.215, 137.09, 215.97, 322.142, 374.983, 509.211, 624.307, 624.423, 624.502, 626.854, 626.907, 626.921, 626.9892, 627.7074, 633.208, 633.216, 633.408, 633.412, 633.414, 633.426, and 717.138.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:
The committee substitute:

- Changes the standards for carbon monoxide detectors in public lodging establishments and requires that the detectors be integrated into the establishment's fire detection system or connected to the boiler safety circuit so the boiler is prevented from operating when carbon monoxide is detected.
- Removes a provision that increased certain fees for service of process.
- Revises the definition of public adjuster so that licensed health insurance agents can assist insureds with specified issues.
- Changes the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.
- Requires the award of grants to certain fire departments under the Firefighter Assistance Grant Program be prioritized based on the annual Florida Fire Service Needs Assessment Survey.
- Provides for additional rulemaking authority relating to the Division of Unclaimed Property.
- Appropriates the recurring sum of $500,000 from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

CS by Banking and Insurance on January 19, 2016:
The committee substitute:

- Maintains current law regarding "for-profit organizations" and the Florida Single Audit Act. The original bill excluded for-profit organizations from the Act.
- Creates a procedure for applicants for certification as firefighters who have been convicted of a felony to obtain certification if they demonstrate by clear and convincing evidence that they would not pose a risk to persons or property if they were granted a certificate.
- Creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.
- Requires the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association's regular membership but does not provide for nominations.
- Provides discretion for the State Fire Marshal to suspend or revoke other certificates when a firefighter or other certificate holder has a certificate suspended or revoked.
- Removes a provision of the original bill relating to sinkhole insurance.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 374 - 386

and insert:

Administration ~~bear the label of a nationally recognized testing laboratory and have been tested and listed as complying with the most recent Underwriters Laboratories, Inc., Standard 2034, or its equivalent~~, unless it is determined that carbon monoxide hazards have otherwise been adequately mitigated as determined by the local fire official or his designee ~~the Division of State~~

~~Fire Marshal of the Department of Financial Services~~. Such devices shall be integrated with the public lodging establishment's fire detection system. Any such installation ~~or determination~~ shall be made in accordance with rules adopted by the Division of State Fire Marshal. In lieu of connecting the carbon monoxide detector to the fire detection system, the detector may be connected to a control unit until listed as complying with UL 2017 or a combination system in accordance with NFPA 720. Either the control unit or the combination system shall be connected to the boiler safety circuit and wired so that the boiler is prevented from operating when carbon monoxide is detected until it is reset manually.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 37 - 39

and insert:

of public lodging establishments; revising an exception to such standards; providing an

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Between lines 508 and 509
insert:

Section 15. Subsection (1) of section 626.931, Florida Statutes, is amended to read:

626.931 Agent affidavit and insurer reporting requirements.—

(1) Each surplus lines agent that has transacted business during a calendar quarter shall on or before the 45th day after


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the end of the ~~following each~~ calendar quarter file with the Florida Surplus Lines Service Office an affidavit, on forms as prescribed and furnished by the Florida Surplus Lines Service Office, stating that all surplus lines insurance transacted by him or her during such calendar quarter has been submitted to the Florida Surplus Lines Service Office as required.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 59

and insert:

governors; amending s. 626.931, F.S.; limiting a requirement for the quarterly filing of a certain affidavit with the Florida Surplus Lines Service Office to specified surplus lines agents; amending s. 626.9892, F.S.; providing that


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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 48.151, F.S.; authorizing the Department of Financial Services to create an Internet-based transmission system to accept service of process; amending s. 110.1315, F.S.; removing a requirement that the Executive Office of the Governor review and approve a certain alternative retirement income security program provided by the department; amending s. 112.215, F.S.; authorizing the Chief Financial Officer, with the approval of the State Board of Administration, to include specified employees other than state employees in a deferred compensation plan; conforming a provision to a change made by the act; amending s. 137.09, F.S.; removing a requirement that the department approve certain bonds of county officers; amending s. 215.97, F.S.; revising and providing definitions; increasing the amount of a certain audit threshold; exempting specified higher education entities from certain audit requirements; revising the requirements for state-funded contracts or agreements between a state awarding agency and a higher education entity; providing an exception; providing applicability; conforming provisions to changes made by the act; amending s. 322.142, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to provide certain driver license images to


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the Department of Financial Services for the purpose of investigating allegations of violations of the insurance code; amending s. 374.983, F.S.; naming the Board of Commissioners of the Florida Inland Navigation District, rather than the Chief Financial Officer, as the entity that receives and approves certain surety bonds of commissioners; amending s. 509.211, F.S.; revising certain standards for carbon monoxide detector devices in specified spaces or rooms of public lodging establishments; deleting a provision authorizing the State Fire Marshal of the department to exempt a device from such standards; providing an alternative method of installing such devices; amending s. 624.307, F.S.; conforming provisions to changes made by the act; specifying requirements for the Chief Financial Officer in providing notice of electronic transmission of process documents; amending s. 624.423, F.S.; authorizing service of process by specified means; reenacting and amending s. 624.502, F.S.; specifying fees to be paid by the requestor to the department or Office of Insurance Regulation for certain service of process on authorized and unauthorized insurers; amending s. 626.854, F.S.; revising applicability of the definition of the term "public adjuster"; amending s. 626.907, F.S.; requiring a service of process fee for certain service of process made by the Chief Financial Officer; specifying the determination of a defendant's last known principal place of business; amending s.

626.921, F.S.; revising membership requirements of the Florida Surplus Lines Service Office board of governors; amending s. 626.9892, F.S.; providing that the department, rather than the Division of Insurance Fraud, investigates certain crimes; adding violations of specified statutes to the Anti-Fraud Reward Program; amending s. 627.7074, F.S.; providing an additional ground for disqualifying a neutral evaluator for disputed sinkhole insurance claims; creating s. 633.107, F.S.; authorizing the department to grant exemptions from disqualification for licensure or certification by the Division of State Fire Marshal under certain circumstances; specifying the information an applicant must provide; providing the manner in which the department must render its decision to grant or deny an exemption; providing procedures for an applicant to contest the decision; providing an exception from certain requirements; authorizing the division to adopt rules; creating s. 633.135, F.S.; establishing the Firefighter Assistance Program for certain purposes; requiring the division to administer the program and annually award grants to qualifying fire departments; defining the term "combination fire department"; requiring the division to prioritize the annual award of grants to specified fire departments; providing eligibility requirements; requiring the State Fire Marshal to adopt rules and procedures; providing program requirements; amending s. 633.208, F.S.; revising applicability of the Life

Safety Code to exclude one-family and two-family dwellings, rather than only such dwellings that are newly constructed; amending s. 633.216, F.S.; conforming a cross-reference; amending s. 633.408, F.S.; revising firefighter and volunteer firefighter certification requirements; specifying the duration of certain firefighter certifications; amending s. 633.412, F.S.; deleting a requirement that the division suspend or revoke all issued certificates if an individual's certificate is suspended or revoked; amending s. 633.414, F.S.; conforming provisions to changes made by the act; revising alternative requirements for renewing specified certifications; providing grounds for denial of, or disciplinary action against, certifications for a firefighter or volunteer firefighter; amending s. 633.426, F.S.; revising a definition; providing a date after which an individual is subject to revocation of certification under specified circumstances; amending s. 717.138, F.S.; providing applicability for the department's rulemaking authority; providing an appropriation; providing an effective date.

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

Section 1. Subsection (3) of section 48.151, Florida Statutes, is amended to read:

48.151 Service on statutory agents for certain persons.—

(3) The Chief Financial Officer or his or her assistant or

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deputy or another person in charge of the office is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, warranty associations under chapter 634, prepaid limited health service organizations under chapter 636, and persons required to file statements under s. 628.461. As an alternative to service of process made by mail or personal service on the Chief Financial Officer, on his or her assistant or deputy, or on another person in charge of the office, the Department of Financial Services may create an Internet-based transmission system to accept service of process by electronic transmission of documents.

Section 2. Subsection (1) of section 110.1315, Florida Statutes, is amended to read:

110.1315 Alternative retirement benefits; other-personal-services employees.—

(1) ~~Upon review and approval by the Executive Office of the Governor,~~ The Department of Financial Services shall provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The Department of Financial Services may contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal

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Revenue Code. The Department of Financial Services may develop a request for proposals and solicit qualified vendors to compete for the award of the contract. A vendor shall be selected on the basis of the plan that best serves the interest of the participating employees and the state. The proposal must comply with all necessary federal and state laws and rules.

Section 3. Paragraph (a) of subsection (4) and subsection (12) of section 112.215, Florida Statutes, are amended to read:

112.215 Government employees; deferred compensation program.—

(4)(a) The Chief Financial Officer, with the approval of the State Board of Administration, shall establish such plan or plans of deferred compensation for state employees and may include persons employed by a state university as defined in s. 1000.21, a special district as defined in s. 189.012, or a water management district as defined in s. 189.012, including all such investment vehicles or products incident thereto, as may be available through, or offered by, qualified companies or persons, and may approve one or more such plans for implementation by and on behalf of the state and its agencies and employees.

(12) The Chief Financial Officer may adopt any rule necessary to administer and implement this act with respect to deferred compensation plans for state employees and persons employed by a state university as defined in s. 1000.21, a special district as defined in s. 189.012, or a water management district as defined in s. 189.012.

Section 4. Section 137.09, Florida Statutes, is amended to read:

137.09 Justification and approval of bonds.—Each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. Every such bond shall be approved by the board of county commissioners ~~and by the Department of Financial Services~~ when the board is ~~they and it are~~ satisfied in its ~~their~~ judgment that the bond ~~same~~ is legal, sufficient, and proper to be approved.

Section 5. Present paragraphs (h) through (y) of subsection (2) of section 215.97, Florida Statutes, are redesignated as paragraphs (i) through (z), respectively, a new paragraph (h) is added to that subsection, paragraph (a) and present paragraphs (m) and (v) of that subsection and paragraph (o) of subsection (8) are amended, present subsections (9), (10), and (11) of that section are renumbered as subsections (10), (11), and (12), respectively, and a new subsection (9) is added to that section, to read:

215.97 Florida Single Audit Act.—

(2) ~~Definitions;~~ As used in this section, the term:

(a) "Audit threshold" means the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 ~~$500,000~~ in any fiscal year of such nonstate entity shall be required to have a state single audit, or a project-specific audit, for such fiscal year in accordance with the requirements

of this section. Every 2 years the Auditor General, after consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, shall review the threshold amount for requiring audits under this section and may adjust such threshold amount consistent with the purposes of this section.

(h) "Higher education entity" means a Florida College System institution or a state university, as those terms are defined in s. 1000.21.

(n) ~~(m)~~ "Nonstate entity" means a local governmental entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance.

(w) ~~(v)~~ "State project-specific audit" means an audit of one state project performed in accordance with the requirements of subsection (11) ~~(10)~~.

(8) Each recipient or subrecipient of state financial assistance shall comply with the following:

(o) A higher education entity is exempt from the requirements of paragraph (2)(a) and this subsection ~~A contract involving the State University System or the Florida College System funded by state financial assistance may be in the form of:~~

~~1. A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;~~

~~2. A fixed rate per unit contract that entitles the provider to receive compensation for each contract deliverable provided;~~

~~3. A cost-reimbursable contract that entitles the provider~~

~~to receive compensation for actual allowable costs incurred in performing contract deliverables; or~~

~~4. A combination of the contract forms described in subparagraphs 1., 2., and 3~~.

(9) This subsection applies to any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance.

(a) The contract or agreement must comply with ss. 215.971(1) and 216.3475 and must be in the form of one or a combination of the following:

1. A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.

2. A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.

3. A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

(b) If a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, none of the requirements of this section apply to the conduit higher education entity. However, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the requirements of this subsection and subsection (8).

(c) Regardless of the amount of the state financial assistance, this subsection does not exempt a higher education

entity from compliance with provisions of law that relate to maintaining records concerning state financial assistance to the higher education entity or that allow access and examination of those records by the state awarding agency, the higher education entity, the Department of Financial Services, or the Auditor General.

(d) This subsection does not prohibit the state awarding agency from including terms and conditions in the contract or agreement which require additional assurances that the state financial assistance meets the applicable requirements of laws, regulations, and other compliance rules.

Section 6. Subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and may be made and issued only:

(a) For departmental administrative purposes;

(b) For the issuance of duplicate licenses;

(c) In response to law enforcement agency requests;

(d) To the Department of Business and Professional Regulation and the Department of Health pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the Department of Business and Professional Regulation or the Department of Health;

(e) To the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters in accordance with ss. 98.045 and 98.075;

(f) To the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D cases;

(g) To the Department of Children and Families pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415;

(h) To the Department of Children and Families pursuant to an interagency agreement specifying the number of employees in each of that department's regions to be granted access to the records for use as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations;

(i) To the Agency for Health Care Administration pursuant to an interagency agreement for the purpose of authorized agencies verifying photographs in the Care Provider Background Screening Clearinghouse authorized under s. 435.12;

(j) To the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, ~~and~~ the identification of fraudulent or false claims, and the investigation of allegations of violations of the insurance code by licensees and unlicensed persons;

(k) To district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of

kin of any investigations, including autopsies and other laboratory examinations, authorized in s. 406.11; or

(l) To the following persons for the purpose of identifying a person as part of the official work of a court:

1. A justice or judge of this state;

2. An employee of the state courts system who works in a position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or by his or her designee; or

3. A government employee who performs functions on behalf of the state courts system in a position that is designated in writing for access by the Chief Justice or a chief judge, or by his or her designee.

Section 7. Subsection (2) of section 374.983, Florida Statutes, is amended to read:

374.983 Governing body.—

(2) The present board of commissioners of the district shall continue to hold office until their respective terms shall expire. Thereafter the members of the board shall continue to be appointed by the Governor for a term of 4 years and until their successors shall be duly appointed. Specifically, commencing on January 10, 1997, the Governor shall appoint the commissioners from Broward, Indian River, Martin, St. Johns, and Volusia Counties and on January 10, 1999, the Governor shall appoint the commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm Beach, and St. Lucie Counties. The Governor shall appoint the commissioner from Nassau County for an initial term that coincides with the period remaining in the current terms of the commissioners from Broward, Indian River, Martin, St. Johns, and


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Volusia Counties. Thereafter, the commissioner from Nassau County shall be appointed to a 4-year term. Each new appointee must be confirmed by the Senate. Whenever a vacancy occurs among the commissioners, the person appointed to fill such vacancy shall hold office for the unexpired portion of the term of the commissioner whose place he or she is selected to fill. Each commissioner under this act before he or she assumes office shall be required to give a good and sufficient surety bond in the sum of $10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of his or her office, such bond to be approved by and filed with the board of commissioners of the district ~~Chief Financial Officer~~. Any and all premiums upon such surety bonds shall be paid by the board of commissioners of such district as a necessary expense of the district.

Section 8. Subsection (4) of section 509.211, Florida Statutes, is amended to read:

509.211 Safety regulations.—

(4) Every enclosed space or room that contains a boiler regulated under chapter 554 which is fired by the direct application of energy from the combustion of fuels and that is located in any portion of a public lodging establishment that also contains sleeping rooms shall be equipped with one or more carbon monoxide detector ~~sensor~~ devices that are listed as complying with ANSI/UL 2075, Standard for Gas and Vapor Detectors and Sensors, by a Nationally Recognized Testing Laboratory accredited by the Occupational Safety and Health Administration to list products to that standard ~~bear the label of a nationally recognized testing laboratory and have been~~


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~~tested and listed as complying with the most recent Underwriters Laboratories, Inc., Standard 2034, or its equivalent, unless it is determined that carbon monoxide hazards have otherwise been adequately mitigated as determined by the Division of State Fire Marshal of the Department of Financial Services~~. Such devices must ~~shall~~ be integrated with the public lodging establishment's fire detection system, or connected to the boiler safety circuit and wired so that the boiler is prevented from operating when carbon monoxide is detected until it is reset manually. Any such installation ~~or determination~~ shall be made in accordance with rules adopted by the Division of State Fire Marshal.

Section 9. Subsection (9) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(9) Upon receiving service of legal process issued in any civil action or proceeding in this state against any regulated person or any unauthorized insurer under s. 626.906 or s. 626.937 which is required to appoint the Chief Financial Officer as its attorney to receive service of all legal process, the Chief Financial Officer, as attorney, may, in lieu of sending the process by registered or certified mail, send the process or make it available by any other verifiable means, including, but not limited to, making the documents available by electronic transmission from a secure website established by the department to the person last designated by the regulated person or the unauthorized insurer to receive the process. When process documents are made available electronically, the Chief Financial Officer shall send a notice of receipt of service of process to the person last designated by the regulated person or

unauthorized insurer to receive legal process. The notice must state the date and manner in which the copy of the process was made available to the regulated person or unauthorized insurer being served and contain the uniform resource locator (URL) for a hyperlink to access files and information on the department's website to obtain a copy of the process.

Section 10. Section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(1) Service of process upon the Chief Financial Officer as process agent of the insurer ~~(~~under ss. ~~s.~~ 624.422 and 626.937~~)~~ shall be made by serving a copy of the process upon the Chief Financial Officer or upon her or his assistant, deputy, or other person in charge of her or his office. Service may also be made by mail or electronically as provided in s. 48.151. Upon receiving such service, the Chief Financial Officer shall retain a record copy and promptly forward one copy of the process by registered or certified mail or by other verifiable means, as provided under s. 624.307(9), to the person last designated by the insurer to receive the same, as provided under s. 624.422(2). For purposes of this section, records may be retained as paper or electronic copies.

(2) If ~~Where~~ process is served upon the Chief Financial Officer as an insurer's process agent, the insurer is ~~shall~~ not ~~be~~ required to answer or plead except within 20 days after the date upon which the Chief Financial Officer sends or makes available by other verifiable means ~~mailed~~ a copy of the process served upon her or him as required by subsection (1).

(3) Process served upon the Chief Financial Officer and

sent or made available in accordance with this section and s. 624.307(9) ~~copy thereof forwarded as in this section provided~~ shall for all purposes constitute valid and binding service thereof upon the insurer.

Section 11. Notwithstanding the expiration date in section 41 of chapter 2015-222, Laws of Florida, section 624.502, Florida Statutes, as amended by chapter 2013-41, Laws of Florida, is reenacted and amended to read:

624.502 Service of process fee.—In all instances as provided in any section of the insurance code and s. 48.151(3) in which service of process is authorized to be made upon the Chief Financial Officer or the director of the office, the party requesting service ~~plaintiff~~ shall pay to the department or office a fee of $15 for such service of process on an authorized insurer or on an unauthorized insurer, which fee shall be deposited into the Administrative Trust Fund.

Section 12. Present paragraph (b) of subsection (2) of section 626.854, Florida Statutes, is redesignated as paragraph (c), and a new paragraph (b) is added to that subsection, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(2) This definition does not apply to:

(b) A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claims filing process, or filing a claim, as such assistance relates to

coverage under a health insurance policy.

Section 13. Subsection (1) of section 626.907, Florida Statutes, is amended to read:

626.907 Service of process; judgment by default.—

(1) Service of process upon an insurer or person representing or aiding such insurer pursuant to s. 626.906 shall be made by delivering to and leaving with the Chief Financial Officer, his or her assistant or deputy, or another person in charge of the ~~or some person in apparent charge of his or her~~ office two copies thereof and the service of process fee as required in s. 624.502. The Chief Financial Officer shall forthwith mail by registered mail, commercial carrier, or any verifiable means, one of the copies of such process to the defendant at the defendant's last known principal place of business as provided by the party submitting the documents and shall keep a record of all process so served upon him or her. The service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the defendant's last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

Section 14. Paragraph (a) of subsection (4) of section 626.921, Florida Statutes, is amended to read:

626.921 Florida Surplus Lines Service Office.—

(4) The association shall operate under the supervision of a board of governors consisting of:

(a) Five individuals nominated by the Florida Surplus Lines Association and appointed by the department from the regular membership of the Florida Surplus Lines Association.

Each board member shall be appointed to serve beginning on the date designated by the plan of operation and shall serve at the pleasure of the department for a 3-year term, such term initially to be staggered by the plan of operation so that three appointments expire in 1 year, three appointments expire in 2 years, and three appointments expire in 3 years. Members may be reappointed for subsequent terms. The board of governors shall elect such officers as may be provided in the plan of operation.

Section 15. Subsection (2) of section 626.9892, Florida Statutes, is amended to read:

626.9892 Anti-Fraud Reward Program; reporting of insurance fraud.—

(2) The department may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the department ~~Division of Insurance Fraud~~ arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, s. 790.164, s. 790.165, s. 790.166, s. 806.031, s. 806.10, s. 806.111, s. 817.233, or s. 817.234.

Section 16. Paragraph (a) of subsection (7) of section

627.7074, Florida Statutes, is amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. The department shall allow the parties to submit requests to disqualify evaluators on the list for cause.

(a) The department shall disqualify neutral evaluators for cause based only on any of the following grounds:

1. A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.

2. The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

4. The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of any party to the case.

5. The proposed neutral evaluator has, within the preceding 5 years, worked for any entity that performed any sinkhole loss testing, review, or analysis for the property.

Section 17. Section 633.107, Florida Statutes, is created to read:

633.107 Exemption from disqualification from licensure or certification.—

(1) The department may grant an exemption from disqualification to any person disqualified from licensure or certification by the Division of State Fire Marshal under this chapter because of a criminal record or dishonorable discharge from the United States Armed Forces if the applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, cost of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense and:

(a) At least 5 years have elapsed since the applicant completed or has been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense; or

(b) At least 5 years have elapsed since the applicant was dishonorably discharged from the United States Armed Forces.

(2) For the department to grant an exemption, the applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or property if permitted to be licensed or certified under this chapter, evidence of which must include, but need not be limited to, facts and circumstances surrounding the disqualifying offense, the time that has elapsed since the offense, the nature of the offense and harm caused to the victim, the applicant's history before and after the offense, and any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be

licensed or certified.

(3) The department has discretion whether to grant or deny an exemption. The department shall provide its decision in writing which, if the exemption is denied, must state with particularity the reasons for denial. The department's decision is subject to proceedings under chapter 120, except that a formal proceeding under s. 120.57(1) is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.

(4) An applicant may request an exemption, notwithstanding the time limitations of paragraphs (1)(a) and (b), if by executive clemency his or her civil rights are restored, or he or she receives a pardon, from the disqualifying offense. The fact that the applicant receives executive clemency does not alleviate his or her obligation to comply with subsection (2) or in itself require the department to award the exemption.

(5) The division may adopt rules to administer this section.

Section 18. Section 633.135, Florida Statutes, is created to read:

633.135 Firefighter Assistance Grant Program.—

(1) The Firefighter Assistance Grant Program is created within the division to improve the emergency response capability of volunteer fire departments and combination fire departments. The program shall provide financial assistance to improve firefighter safety and enable such fire departments to provide firefighting, emergency medical, and rescue services to their communities. For purposes of this section, the term "combination fire department" means a fire department composed of a

combination of career and volunteer firefighters.

(2) The division shall administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist such fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. However, the division shall prioritize the annual award of grants to such combination fire departments and volunteer fire departments demonstrating need as a result of participating in the annual Florida Fire Service Needs Assessment Survey.

(3) The State Fire Marshal shall adopt rules and procedures for the program that require grant recipients to:

(a) Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System created pursuant to s. 633.136;

(b) Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;

(c) Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536;

(d) Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and

(e) Meet the definition of the term "fire service provider" in s. 633.102.

(4) Funds shall be used to:

(a) Provide firefighter training to individuals to obtain a

Volunteer Firefighter Certificate of Completion pursuant to s. 633.408. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division's electronic database.

(b) Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear, that complies with NFPA No. 1851, "Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting," by the National Fire Protection Association.

(c) Purchase self-contained breathing apparatus equipment that complies with NFPA No. 1852, "Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus."

(d) Purchase fire engine pumper apparatus equipment. Funds provided under this paragraph may be used to purchase the equipment or subsidize a federal grant from the Federal Emergency Management Agency to purchase the equipment.

Section 19. Subsection (8) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(8) The provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to ~~newly constructed~~ one-family and two-family dwellings. However, fire sprinkler protection may be permitted by local government in lieu of other fire protection-related development requirements for such structures. While local governments may adopt fire sprinkler requirements for one- and two-family dwellings under

this subsection, it is the intent of the Legislature that the economic consequences of the fire sprinkler mandate on home owners be studied before the enactment of such a requirement. After the effective date of this act, any local government that desires to adopt a fire sprinkler requirement on one- or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one- or two-family dwellings or any proposed residential subdivision. The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property. The report must include an assessment of the cost savings from any reduced or eliminated impact fees if applicable, the reduction in special fire district tax, insurance fees, and other taxes or fees imposed, and the waiver of certain infrastructure requirements including the reduction of roadway widths, the reduction of water line sizes, increased fire hydrant spacing, increased dead-end roadway length, and a reduction in cul-de-sac sizes relative to the costs from fire sprinkling. A failure to prepare an economic report shall result in the invalidation of the fire sprinkler requirement to any one- or two-family dwelling or any proposed subdivision. In addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-fire sprinklered dwelling, on the basis that a one- or two-family dwelling unit is protected by a fire sprinkler system.

Section 20. Subsection (2) of section 633.216, Florida Statutes, is amended to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification;

disciplinary action.—The State Fire Marshal and her or his agents or persons authorized to enforce laws and rules of the State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(2) Except as provided in s. 633.312(2), every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal. Such person shall meet the requirements of s. 633.412(1)-(4) ~~s. 633.412(1)(a)-(d)~~, and:

(a) Have satisfactorily completed the firesafety inspector certification examination as prescribed by division rule; and

(b)1. Have satisfactorily completed, as determined by division rule, a firesafety inspector training program of at least 200 hours established by the department and administered by education or training providers approved by the department for the purpose of providing basic certification training for firesafety inspectors; or

2. Have received training in another state which is determined by the division to be at least equivalent to that required by the department for approved firesafety inspector

education and training programs in this state.

Section 21. Paragraph (b) of subsection (4) and subsection (8) of section 633.408, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(4) The division shall issue a firefighter certificate of compliance to an individual who does all of the following:

(b) Passes the Minimum Standards Course examination within 12 months after completing the required courses.

(8)(a) Pursuant to s. 590.02(1)(e), the division shall establish a structural fire training program of not less than 206 hours. The division shall issue to a person satisfactorily complying with this training program and who has successfully passed an examination as prescribed by the division and who has met the requirements of s. 590.02(1)(e), a Forestry Certificate of Compliance.

(b) An individual who holds a current and valid Forestry Certificate of Compliance is entitled to the same rights, privileges, and benefits provided for by law as a firefighter.

(9) A Firefighter Certificate of Compliance or a Volunteer Firefighter Certificate of Completion issued under this section expires 4 years after the date of issuance unless renewed as provided in s. 633.414.

Section 22. Section 633.412, Florida Statutes, is amended to read:

633.412 Firefighters; qualifications for certification.—

~~(1)~~ A person applying for certification as a firefighter must:

(1) ~~(a)~~ Be a high school graduate or the equivalent, as the term may be determined by the division, and at least 18 years of age.

(2) ~~(b)~~ Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country, or dishonorably discharged from any of the Armed Forces of the United States. "Convicted" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere, in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(3) ~~(c)~~ Submit a set of fingerprints to the division with a current processing fee. The fingerprints will be forwarded to the Department of Law Enforcement for state processing and forwarded by the Department of Law Enforcement to the Federal Bureau of Investigation for national processing.

(4) ~~(d)~~ Have a good moral character as determined by investigation under procedure established by the division.

(5) ~~(e)~~ Be in good physical condition as determined by a medical examination given by a physician, surgeon, or physician assistant licensed to practice in the state pursuant to chapter 458; an osteopathic physician, surgeon, or physician assistant licensed to practice in the state pursuant to chapter 459; or an advanced registered nurse practitioner licensed to practice in the state pursuant to chapter 464. Such examination may include, but need not be limited to, the National Fire Protection

Association Standard 1582. A medical examination evidencing good physical condition shall be submitted to the division, on a form as provided by rule, before an individual is eligible for admission into a course under s. 633.408.

(6) ~~(f)~~ Be a nonuser of tobacco or tobacco products for at least 1 year immediately preceding application, as evidenced by the sworn affidavit of the applicant.

~~(2) If the division suspends or revokes an individual's certificate, the division must suspend or revoke all other certificates issued to the individual by the division pursuant to this part.~~

Section 23. Section 633.414, Florida Statutes, is amended to read:

633.414 Retention of firefighter, volunteer firefighter, and fire investigator certifications ~~certification~~.—

(1) In order for a firefighter to retain her or his Firefighter Certificate of Compliance, every 4 years he or she must meet the requirements for renewal provided in this chapter and by rule, which must include at least one of the following:

(a) Be active as a firefighter.~~;~~

(b) Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division.~~;~~

(c) Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule.~~; or~~

(d) Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408.

(2) In order for a volunteer firefighter to retain her or his Volunteer Firefighter Certificate of Completion, every 4 years he or she must:

(a) Be active as a volunteer firefighter; or

(b) Successfully complete a refresher course consisting of a minimum of 40 hours of training to be prescribed by rule.

(3) Subsection (1) does not apply to state-certified firefighters who are certified and employed full-time, as determined by the fire service provider, as firesafety inspectors or fire investigators, regardless of their ~~her or his~~ employment status as firefighters or volunteer firefighters ~~a firefighter~~.

(4) For the purposes of this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter for a cumulative period of 6 months within a 4-year period.

(5) The 4-year period begins upon issuance of the certificate or separation from employment~~:~~

~~(a) If the individual is certified on or after July 1, 2013, on the date the certificate is issued or upon termination of employment or service with a fire department~~.

~~(b) If the individual is certified before July 1, 2013, on July 1, 2014, or upon termination of employment or service thereafter.~~

(6) A certificate for a firefighter or volunteer firefighter expires if he or she fails to meet the requirements

of this section.

(7) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firefighter or volunteer firefighter if the State Fire Marshal finds that any of the following grounds exists:

(a) Any cause for which issuance of a certificate could have been denied if it had then existed and had been known to the division.

(b) A violation of any provision of this chapter or any rule or order of the State Fire Marshal.

(c) Falsification of a record relating to any certificate issued by the division.

Section 24. Subsections (1) and (2) of section 633.426, Florida Statutes, are amended to read:

633.426 Disciplinary action; standards for revocation of certification.—

(1) For purposes of this section, the term:

(a) "Certificate" means any of the certificates issued under s. 633.406.

(b) "Certification" or "certified" means ~~the act of~~ holding a certificate that is current and valid and that meets the requirements for renewal of certification pursuant to this chapter and the rules adopted under this chapter ~~certificate~~.

(c) "Convicted" means a finding of guilt, or the acceptance of a plea of guilty or nolo contendere, in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(2) Effective July 1, 2013, an individual who holds a

certificate is subject to revocation for any of the following ~~An individual is ineligible to apply for certification if the individual has, at any time, been~~:

(a) Conviction ~~Convicted~~ of a misdemeanor relating to the certification or to perjury or false statements.

(b) Conviction ~~Convicted~~ of a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof, or under the law of any other country.

(c) Dishonorable discharge ~~Dishonorably discharged~~ from any of the Armed Forces of the United States.

Section 25. Section 717.138, Florida Statutes, is amended to read:

717.138 Rulemaking authority.—The department shall administer and provide for the enforcement of this chapter. The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. The department may adopt rules to allow for electronic filing of fees, forms, and reports required by this chapter. The authority to adopt rules pursuant to this chapter applies to all unclaimed property reported and remitted to the Chief Financial Officer, including, but not limited to, property reported and remitted pursuant to ss. 43.19, 45.032, 732.107, 733.816, and 744.534.

Section 26. For the 2016-2017 fiscal year, the sum of $500,000 in recurring funds from the Insurance Regulatory Trust Fund is appropriated to the Department of Financial Services, and one full-time equivalent position with associated salary rate of 50,000 is authorized, for the purpose of implementing

this act.

Section 27. This act shall take effect July 1, 2016.

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 Appropriations

BILL:	CS/CS/SB 992
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Brandes
SUBJECT:	Department of Financial Services
DATE:	February 22, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.	Betta	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 992 makes various changes to statutes relating to the Department of Financial Services (DFS or the department).

Current law requires plaintiffs to serve lawsuits on insurance companies by serving documents initiating the lawsuit at the department. These documents are sent to the DFS by mail or by process server. The bill allows the DFS to create a system for electronic service of process and create an internet-based system for distributing documents to insurance companies.

The Chief Financial Officer (CFO) is designated the State Fire Marshal. The CFO administers the state fire code and the certification of firefighters. This bill provides for expiration of firefighter certifications after four years and provides a renewal process. It provides additional grounds that the State Fire Marshal can suspend, revoke, or deny an application for certification. The bill creates a procedure for an applicant for firefighter certification with a criminal record or dishonorable discharge from the United States Armed Forces to obtain a certificate if they can demonstrate by clear and convincing evidence that they do not pose a risk to persons or property.

The bill creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments. The program will provide financial assistance to improve firefighter safety and

enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The bill provides that employees of the state university system, a special district, or a water management district can participate in the deferred compensation program for state employees administered by the department.

This bill amends the Florida Single Audit Act to raise the audit threshold from $500,000 to $750,000 to conform to the federal single audit act. It reorganizes the statute to place the provisions relating to higher education entities in one section.

The bill provides that a licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

The bill authorizes the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association's regular membership but does not provide for nominations.

The department administers the sinkhole neutral evaluation program for the resolution of disputed sinkhole insurance claims. This bill amends the qualifications of the neutral evaluator to provide that one cannot serve as a neutral evaluator on a claim if the individual was employed, within the previous five years, by the firm that did the initial sinkhole testing.

The bill allows the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code. This will allow, for example, the DFS' Division of Agent and Agency Services access to photographs to aid in the investigation of insurance agents.

The bill amends the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.

The bill provides cost savings to the state, estimated to be $54,500, due to the changes in the service of process. The bill appropriates the recurring sum of $500,000 and one position to support the Volunteer Firefighter Assistance Grant Program from the Insurance Regulatory Trust Fund.

II. Present Situation:

Service of Process on the Chief Financial Officer

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Section 48.151, F.S., provides that the Chief Financial Officer ("CFO") is the agent for service of process for:

- All insurers applying for authority to transact insurance;
- All licensed nonresident insurance agents;

- All nonresident disability insurance agents;
- Any unauthorized insurer under s. 626.906 or s. 626.937, F.S.;
- All domestic reciprocal insurers;
- All fraternal benefit societies;
- All warranty associations;
- All prepaid limited health service organizations; under chapter 636; and
- All persons required to file statements under s. 628.461, F.S.[1]

All persons or entities for which the CFO is the agent for service of process must designate an individual to receive documents served on DFS. In order to serve process on an insurance company or other entity for which the CFO is the agent, a plaintiff must mail the summons and other documents to the DFS or serve the documents at the DFS by personal service at the DFS Tallahassee office. The plaintiff must pay a $15 fee to the DFS for service.[2] The CFO cannot accept service via electronic mail.[3]

Once the DFS receives the documents, it forwards them to the insurer or entity.[4] The CFO can use registered or certified mail to send the documents to authorized insurers.[5] The CFO can use registered mail to send the documents to unauthorized insurers.[6] Section 624.307, F.S., also allows the CFO to use certified mail, registered mail, or other verifiable means to serve regulated entities.

According to representatives of the DFS, many law firms are creating and filing documents in court electronically but must print and send paper copies to the DFS. The DFS believes it could improve efficiency if plaintiffs were allowed to serve DFS electronically.[7]

Alternative Retirement Benefits for OPS Employees

Section 110.1315, F.S., requires that upon review and approval by the Executive Office of the Governor, the DFS must provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The DFS is allowed to contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code.[8] By creating the program for such employees, the state does not have to contribute to Social Security as an employer.[9] The DFS reports that the program saved the state $11 million in 2013 and 2014.[10]

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[1] *See* s. 48.151(3), F.S.
[2] *See* s. 624.502, F.S.
[3] *See* http://www.myfloridacfo.com/division/legalservices/ServiceofProcess/default.htm (last visited January 13, 2016).
[4] *See* ss. 624.307, 624.423, and 626.907, F.S.
[5] *See* s. 624.423, F.S.
[6] *See* s. 626.907, F.S.
[7] Interview with DFS staff, January 13, 2016.
[8] *See* s. 110.1315(1), F.S.
[9] *See Description of Intended Single Source Purchase*, Department of Financial Services, December 22, 2015 at http://www.myflorida.com/apps/vbs/adoc/F20507_PUR7776DFSTRSS151610.pdf (last visited January 14, 2016).
[10] *Id*.

Florida Deferred Compensation Program

Section 112.215, Florida Statutes, requires the CFO to create a deferred compensation plan for state employees. The plan allows state employees to defer a portion of their income and place it in an investment account. The employee does not pay taxes on the deferred amount or any investment gains until the employee withdraws the money.[11]

Approval of Bonds

Section 137.09, F.S., provides that each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. These bonds must be approved by the board of county commissioners and by the DFS. Section 374.983, F.S., requires each commissioner of the Board of Commissioners of the Florida Inland Navigation District to post a surety bond in the sum of $10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of the office. This bond must be approved by the CFO. The DFS has not been required to approve bonds under either of these statutes in quite some time and believes the requirements are not needed.[12]

Florida Single Audit Act

Section 215.97, F.S., creates the Florida Single Audit Act. The DFS has explained the history and purpose:

> In 1998, the Florida Single Audit Act was enacted to establish state audit and accountability requirements for state financial assistance provided to nonstate entities. The Legislature found that while federal financial assistance passing through the state to nonstate entities was subject to mandatory federal audit requirements, significant amounts of state financial assistance was being provided to nonstate entities that was not subject to audit requirements that paralleled federal audit requirements. Accordingly, it was the intent of the Act that state audit and accountability requirements, to the extent possible, parallel the federal audit requirements.[13]

Each nonstate entity that expends more than $500,000 in state financial assistance[14] in a fiscal year is required to have an audit for that fiscal year. Nonstate entities include local governments, nonprofit organizations, and for-profit organizations.[15]

[11] *See* https://www.myfloridadeferredcomp.com/SOFWeb/default.aspx (last visited January 14, 2016).
[12] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).
[13] *See* https://apps.fldfs.com/fsaa/singleauditact.aspx (last visited January 14, 2016).
[14] State financial assistance is state resources provided to a nonstate entity to carry out a state project.
[15] *See* s. 215.97(2)(m), F.S.

Section 215.97(8)(o), F.S., provides that contracts involving the State University System or the Florida College System funded by state financial assistance may be in the form of the following:

- A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or
- A combination of the above contract forms.

The DFS reports that because references to higher education entities are spread throughout the Florida Single Audit Act, there is confusion over which provisions apply in various situations.[16]

Driver Licenses Photographs

The Department of Highway Safety and Motor Vehicles maintains digital photographs of licenses pursuant to s. 322.142, F.S. Those photographs are exempt from public disclosure but may be shared with various state agencies to assist the agencies' with their duties. The DFS can obtain such photographs to facilitate the validation of unclaimed property claims and the identification of false or fraudulent claims.[17]

Boiler Regulation

Chapter 554, F.S., is the Florida Boiler Safety Act. The DFS administers the boiler safety code. Section 509.211, F.S., provides that every enclosed room or space that contains a boiler and that is located in a public lodging establishment must be equipped with a carbon monoxide sensor that bears the label of a nationally tested laboratory and complies with the most recent Underwriters Laboratories Standard 2034.[18] The statute provides that the carbon monoxide detector is not necessary if the DFS Division of State Fire Marshal determines the carbon monoxide hazard has been mitigated.[19]

Public Adjusters

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies. The Department of Financial Services (DFS) regulates all types of adjusters.

[16] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).
[17] *See* s. 322.142(4), F.S.
[18] The standard relating to carbon monoxide detectors. *See* http://ulstandards.ul.com/standard/?id=2034 (last visited January 14, 2016).
[19] *See* s. 509.211(4), F.S.

Appointments to the Board of the Florida Surplus Lines Service Office

Section 626.921, F.S., creates the Florida Surplus Lines Service Office (FSLSO). The FSLSO is a self-regulating, nonprofit association for Florida surplus lines agents. The FSLSO's responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.[20] The FSLSO is operated under the supervision of a board of governors consisting of:

- Five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association.
- Two individuals appointed by the DFS, one from each of the two largest domestic agents' associations, each of whom must be licensed surplus lines agents.
- The Insurance Consumer Advocate.
- One individual appointed by the department, who must be a risk manager for a large domestic commercial enterprise.[21]

The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors and claim adjustment companies. The purpose of the association is to encourage an exchange of information among members and to disseminate educational information for the benefit of members and the betterment of the excess and surplus lines industry.[22]

Surplus Lines Agent Reporting

Section 626.931 F.S., requires each surplus lines agent to quarterly file an affidavit, on forms prescribed and furnished by the FSLSO, stating that all surplus lines insurance transacted by the agent during the calendar quarter has been submitted to the FSLSO.

Anti-Fraud Reward Program

Section 626.9892, F.S., creates the Anti-Fraud Reward Program within the DFS funded from the Insurance Regulatory Trust Fund. The program allows the DFS to provide rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons convicted of crimes investigated by the Division of Insurance Fraud. The program was established in 1999 and has paid over $365,000 in rewards.[23]

Neutral Evaluators

Sections 627.707-627.7074, F.S., create requirements for the investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional

[20] *See* s. 626.921(1), F.S.
[21] *See* s. 626.921(4), F.S.
[22] *See* s. http://www.myfsla.com/about/
[23] *See* http://www.myfloridacfo.com/sitePages/agency/dfs.aspx (last accessed February 11, 2015).

geologist to conduct testing[24] to determine the cause of the loss if sinkhole loss is covered under the policy.[25] If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.[26]

Neutral evaluation is available to either party if a sinkhole report has been issued.[27] Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs.[28] Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.[29]

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured.[30] A request for neutral evaluation is filed with the DFS. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request.[31] The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization.[32] The report is admissible in subsequent court proceedings.[33] Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

Section 627.7074(7), F.S., provides reasons for which a neutral evaluator may be disqualified:

- A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.
- The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.
- The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.
- The proposed neutral evaluator has, within the preceding five years, worked as an employer or employee of any party to the case.

Provisions Related to the State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the CFO as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the DFS, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to

[24] s. 627.7072, F.S., contains testing standards in sinkhole claims.
[25] s. 627.707(2), F.S.
[26] s. 627.707(4)(a), F.S.
[27] s. 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.
[28] s. 627.7074(2), F.S.
[29] s. 627.7074(3), F.S.
[30] s. 627.7074(4), F.S.
[31] s. 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.
[32] ss. 627.7074(5), (12), F.S.
[33] s. 627.7074(13), F.S.

fire.[34] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code[35], which contains fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

III. Effect of Proposed Changes:

Service of Process on the Chief Financial Officer (Sections 1, 9, 10, 11, and 13)

This bill provides an alternative means for plaintiffs to serve process on insurers and other regulated persons. The bill allows the Department of Financial Services (DFS) to create an internet-based transmission system to accept service of process by electronic transmission of documents. This will allow plaintiffs to serve documents electronically and allow DFS to remove the requirement that paper documents be served.

Once served, the Chief Financial Officer (CFO) can mail the documents, send them by some other verifiable means, or make them available by electronic transmission to a secure website established by the DFS. Once documents are made available electronically, the CFO must send notice of receipt to the person designated to receive legal process. The notice must state the date and manner in which the copy of process was made available and contain the uniform resource locator for a hyperlink to access files and information on the Department's website to obtain a copy of the process.

Alternative Retirement Benefits for OPS Employees

Section 2 amends s. 110.1315, F.S., to remove the review and approval duties from the Executive Office of the Governor relating to the alternative retirement income security program for temporary and seasonal employees of the state.

Florida Deferred Compensation Program

Section 3 amends s. 112.215, F.S., to provide that persons employed by a state university, special district, or a water management district are eligible to participate in the deferred compensation program established by the CFO. According the DFS, these employees currently participate in the program but the DFS states that clarification is needed.[36]

[34] s. 633.104, F.S.
[35] *See* http://www.myfloridacfo.com/division/sfm/BFP/FloridaFirePreventionCodePage.htm (last visited January 14, 2016).
[36] *See* Department of Financial Services, *An Act Relating to the Department of Financial Services* White Paper (on file with the Committee on Banking and Insurance).

Approval of Bonds (Sections 4 and 7)

Sections 4 and 7 amend ss. 137.09 and 374.983, F.S., to remove the requirement that the DFS approve bonds for county commissioners and commissioners of the Florida Inland Navigation District. The bonds will still be reviewed by the county boards and by the Florida Inland Navigation District.

Florida Single Audit Act (Section 5)

The bill amends the Florida Single Audit Act to raise the audit threshold from $500,000 to $750,000. According to the DFS, the federal single audit threshold was recently raised from $500,000 to $750,000. The bill matches the Florida threshold to the federal threshold. Many entities that receive state financial assistance also receive federal financial assistances. This change prevents an entity from having to comply with different audit thresholds.[37]

The bill creates a new subsection to the Florida Single Audit Act to consolidate the provisions of the Act relating to higher education entities.[38] The bill provides that any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance must comply with s. 215.971(1), F.S., (providing that the contract must include provisions relating to scope of work, deliverables, consequences for nonperformance, and return of unused funds) and s. 216.3475, F.S., (limiting payments to the prevailing rate for services). The contract must be in the form or a combination of the following:

- A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

The bill provides that if a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the contracting requirements of the bill.

The bill does not exempt the higher education entity from compliance with maintaining records concerning state financial assistance and does not exempt the entity from laws that allow access and examination of those records by the state awarding agency, the higher education entity, the DFS, or the Auditor General.

Driver Licenses Photographs (Section 6)

This bill amends s. 322.142, F.S., to allow the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code by licensees and by unlicensed persons. For example, this will allow the DFS'

[37] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).
[38] The bill defines "higher education entity" as a Florida College System institution or a state university.

Division of Agent and Agency Services to access photographs to aid in the investigation of insurance agents.[39]

Boiler Regulation (Section 8)

This bill amends s. 509.211, F.S., to remove the reference to a "nationally recognized testing laboratory." It requires the carbon monoxide detector to be listed complying with ANSI/UL 2075, Standard for Gas and Vapor Detectors and Sensors by a nationally recognized testing laboratory accredited by the Occupational Safety and Health Administration unless local fire officials determine the carbon monoxide hazard has been adequately mitigated. The bill requires that the detectors either be integrated to the establishment's fire detection system or connected to a control unit until listed as complying with UL 2017 or a combination system in accordance with NFPA 720. If the detector is connected to the control unit or combination system, they must be connected to the boiler safety circuit and wired such that the boiler does not operate when carbon monoxide is detected until it is manually reset.

The bill removes the ability of the Division of State Fire Marshal to determine that some other method has adequately mitigated the risk and provides that ability to the local fire official or his designee. It requires the carbon monoxide detectors to meet the statutory requirements.

Public Adjusters (Section 12)

The bill provides that a licensed health insurance agent is not defined as a public adjuster in certain situations. A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claim filing process, or filing a claim is not acting as a public adjuster.

Appointments to the Board of the FSLSO (Section 14)

The bill requires that the five members of the Florida Surplus Lines Association regular membership appointed to the FSLSO board of governors must be individuals nominated by the Florida Surplus Lines Association.

Florida Surplus Lines Agent Reporting

The bill provides that only surplus lines agents that have transacted business during the calendar quarter are required to submit the quarterly affidavit to the FSLSO.

Anti-Fraud Reward Program (Section 16)

The bill allows the DFS to give rewards under the Anti-Fraud Reward Program to persons who provide information leading to the arrest and conviction of persons who violate statutes currently investigated by the State Fire Marshal. Crimes include making false reports regarding explosives or arson (s. 790.164, F.S.), planting a "hoax" bomb (s. 790.165, F.S.), crimes related to weapons of mass destruction (s. 790.166, F.S.), arson resulting in injury to a firefighter (s. 806.031, F.S.),

[39] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

preventing extinguishment of a fire (s. 806.10, F.S.), crimes relating to fire bombs (s. 806.111), and burning to defraud an insurer (s. 817.233, F.S.).

Neutral Evaluators (Section 17)

The bill provides that a proposed neutral evaluator is disqualified if he or she has, within the preceding five years, worked for the entity that performed the initial sinkhole testing required by s. 627.7072, F.S.

Provisions Related to the State Fire Marshal (Sections 18-25, 27)

Criminal Records of Applicants for Certification

Section 633.412, F.S., provides that a person applying for certification as a firefighter must not have been convicted of a felony, a misdemeanor relating to the certification, a misdemeanor relating to perjury or false statements, or have been dishonorably discharged from the Armed Forces of the United States. Section 15 of the bill creates s. 633.107, F.S., to give the DFS the discretion to grant certificates to some applicants with criminal records if certain conditions are met. The applicant must have paid in full any fee, fine, fund, lien, civil judgment, restitution, cost of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense. In addition, at least five years must have elapsed since the applicant completed or was released from confinement, supervision, or nonmonetary conditions imposed by the court for a disqualifying offense or at least five years must have elapsed since the applicant was dishonorably discharged from the United States Armed Forces. Once those conditions are met, the applicant must demonstrate by clear and convincing evidence that he or she would not pose a risk to persons or property if licensed or certified. Evidence must include:

- Facts and circumstances surrounding the disqualifying offense;
- The time that has elapsed since the offense;
- The nature of the offense and harm caused to the victim;
- The applicant's history before and after the offense; and
- Any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be licensed or certified.

The bill gives the DFS the discretion whether to grant or deny an exemption. The department must provide its decision to deny the exemption in writing and must state with particularity the reasons for denial. The department's decision is subject to proceedings under chapter 120, F.S., except that a formal proceeding under s. 120.57(1), F.S., is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.[40]

Life Safety Code

Section 20 of this bill provides that the provisions of the Life Safety Code, part of the Florida Fire Prevention Code, do not apply to "newly constructed" one and two-family dwellings. One

[40] The procedure set forth in this bill is similar to the procedure in s. 435.07, F.S., and discussed in *J.D. v. Florida Department of Children and Families*, 114 So.3d 1127 (Fla. 1st DCA 2013).

and two-family dwellings are exempt from the Florida Fire Prevention Code and representatives of the DFS are concerned that the statute could lead to confusion.[41]

Firefighter and Volunteer Firefighter Training and Certification

Currently, to work as a firefighter, an individual must hold a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal ("Division").[42] To obtain a firefighter certificate of compliance, an individual must:

- Satisfactorily complete the Minimum Standards Course[43] or have satisfactorily completed training for firefighters in another state which has been determined by the division to be the equivalent of the training required for the Minimum Standards Course.
- Passes the Minimum Standards Course examination.
- Possesses the qualifications in s. 633.412, F.S.:[44]
  - Be a high school graduate
  - Be at least 18 years old
  - Have no felony convictions
  - Have no misdemeanor convictions relating to the certification or for perjury or false statements
  - Be of good moral character
  - Be in good physical condition as determined by a division approved physical examination
  - Be a nonuser of tobacco or tobacco products for at least year prior to the application

A volunteer firefighter certificate of completion is used for individuals who satisfactorily complete a course established by the division.

Section 22 of the bill requires that an individual seeking a firefighter certificate of compliance must pass the minimum standards course examination within 12 months after completing the required courses. Section 22 also provides that a firefighter certificate of compliance or a volunteer firefighter certificate of completion expires four years after the date of issuance unless renewed.

Section 23 of the bill repeals the requirement of the DFS to suspend or revoke all other certificates an individual holds, if it suspends an individual's certificate.

Retention and Renewal of Certificates

Under current law, s. 633.414, F.S., provides requirements to retain a firefighter certificate of compliance and a volunteer firefighter certificate of completion. In order for a firefighter to retain a certificate of compliance, the firefighter must, every four years:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the division;

[41] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).
[42] *See* s. 633.416, F.S.
[43] This course provides the basic fundamental knowledge and skills to function in a fire fighting environment and consists of at least 398 hours. *See* http://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm (last visited January 14, 2016).
[44] *See* s. 633.408(4), F.S.

- Successfully complete a refresher course consisting of a minimum of 40 hours of training; or
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.

Currently, in order for a volunteer firefighter to retain a volunteer firefighter certificate of completion, the volunteer firefighter must, every four years, be active as a volunteer firefighter or successfully complete a 40 hour refresher course.[45]

Section 24 of the bill requires that the firefighter complete a "Firefighter Retention Refresher Course within six months before the four-year period expires. It further provides that a firefighter or volunteer firefighter certificate expires if the individual does not meet retention requirements. Section 24 provides that the State Fire Marshal may suspend, revoke, or deny a certificate if a reason for denial existed but was not known at the time of issuance, for violations of ch. 633, F.S., or rules or orders of the State Fire Marshal, or falsification of records.

Section 25 of the bill provides that, effective July 1, 2013, an individual who holds a certificate is subject to revocation for:
- A conviction of a misdemeanor relating to the certification or to perjury or false statements;
- A conviction of a felony; or
- A dishonorable discharge from the Armed Forces of the United States.

Firefighter Assistance Grant Program (Section 19)

Section 19 of this bill creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.

The program provides financial assistance to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities. The bill requires the division to administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. The division is required to prioritize the annual award of grants to such fire departments and volunteer fire departments demonstrating need as a result of participating in the Florida Fire Service Needs Assessment Survey.

The bill requires the State Fire Marshal to adopt rules for the program that require grant recipients to:
- Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;

[45] *See* s. 633.414, F.S.

- Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536, F.S.;
- Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and
- Meet the definition of the term "fire service provider" in s. 633.102, F.S.

The bill requires that funds be used to:

- Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division's electronic database;
- Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear; and
- Purchase self-contained breathing apparatus equipment and purchase fire engine pumper apparatus equipment.

Section 27 appropriates $500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

Rulemaking (Section 26)

The bill provides the DFS rulemaking authority relating to unclaimed property to include property reported to the CFO pursuant to s. 43.19, F.S., relating to unclaimed funds paid to the court; s. 45.032, F.S., relating to the disposition of surplus funds after a judicial sale; s. 732.107, F.S., relating to unclaimed funds in intestate probate proceedings; s. 733.816, F.S., relating to unclaimed funds held by personal representatives in probate proceedings; and s. 744.534, F.S., relating to unclaimed funds in guardianship proceedings.

Effective Date (Section 28)

This bill takes effect July 1, 2016.

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:

CS/CS/SB 992 creates a system for electronic service of process at the Department of Financial Services (DFS). This could result in cost savings for plaintiffs who serve documents at the DFS but reduce revenue for process servers who serve pleadings at the DFS office in Tallahassee.

C. Government Sector Impact:

The DFS anticipates a $54,000 per year recurring savings from reduced postage, printing, and information technology costs due to the changes in the service of process statutes in this bill. Future reductions of two or three OPS positions is anticipated.[46]

The bill appropriates $500,000 in recurring funds from the Insurance Regulatory Trust Fund and one position to implement the newly created Volunteer Firefighter Assistance Grant Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 633.107 and 633.135.

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.1315, 112.215, 137.09, 215.97, 322.142, 374.983, 509.211, 624.307, 624.423, 624.502, 626.854, 626.907, 626.921, 626.931, 626.9892, 627.7074, 633.208, 633.216, 633.408, 633.412, 633.414, 633.426, and 717.138.

[46] *See* Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2016:
The committee substitute:

- Changes the standards for carbon monoxide detectors in public lodging establishments and requires that the detectors be integrated into the establishment's fire detection system or connected to the a control unit until listed as complying with UL 2017 or a combination system in accordance with NFPA 720. If the detector is connected to the control unit or combination system, they must be connected to the boiler safety circuit so the boiler is prevented from operating when carbon monoxide is detected.
- Removes the ability of the Division of State Fire Marshal to determine that some other method has adequately mitigated the risk and provides that ability to the local fire official or his designee.
- Removes a provision that increased certain fees for service of process.
- Revises the definition of public adjuster so that licensed health insurance agents can assist insureds with specified issues.
- Clarifies that only surplus lines agents that have transacted business during the calendar quarter are required to submit the quarterly affidavit with the FSLSO.
- Changes the Anti-Fraud Reward Program to allow rewards for persons who provide information related to crimes investigated by the State Fire Marshal.
- Requires the award of grants to certain fire departments under the Firefighter Assistance Grant Program be prioritized based on the annual Florida Fire Service Needs Assessment Survey.
- Provides for additional rulemaking authority relating to the Division of Unclaimed Property.
- Appropriates the recurring sum of $500,000 from the Insurance Regulatory Trust Fund and one position to implement the Firefighter Assistance Grant Program.

CS by Banking and Insurance on January 19, 2016:
The committee substitute:

- Maintains current law regarding "for-profit organizations" and the Florida Single Audit Act. The original bill excluded for-profit organizations from the Act.
- Creates a procedure for applicants for certification as firefighters who have been convicted of a felony to obtain certification if they demonstrate by clear and convincing evidence that they would not pose a risk to persons or property if they were granted a certificate.
- Creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.
- Requires the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association's regular membership but does not provide for nominations.

- Provides discretion for the State Fire Marshal to suspend or revoke other certificates when a firefighter or other certificate holder has a certificate suspended or revoked.
- Removes a provision of the original bill relating to sinkhole insurance.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Brandes

597-02308-16 2016992c1

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 48.151, F.S.; authorizing the Department of Financial Services to create an Internet-based transmission system to accept service of process; amending s. 110.1315, F.S.; removing a requirement that the Executive Office of the Governor review and approve a certain alternative retirement income security program provided by the department; amending s. 112.215, F.S.; authorizing the Chief Financial Officer, with the approval of the State Board of Administration, to include specified employees other than state employees in a deferred compensation plan; conforming a provision to a change made by the act; amending s. 137.09, F.S.; removing a requirement that the department approve certain bonds of county officers; amending s. 215.97, F.S.; revising and providing definitions; increasing the amount of a certain audit threshold; exempting specified higher education entities from certain audit requirements; revising the requirements for state-funded contracts or agreements between a state awarding agency and a higher education entity; providing an exception; providing applicability; conforming provisions to changes made by the act; amending s. 322.142, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to provide certain driver license images to the Department of Financial Services for the purpose of investigating allegations of violations of the insurance code; amending s. 374.983, F.S.; naming the Board of Commissioners of the Florida Inland Navigation District, rather than the Chief Financial

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Officer, as the entity that receives and approves certain surety bonds of commissioners; amending s. 509.211, F.S.; revising certain standards for carbon monoxide detector devices in specified spaces or rooms of public lodging establishments; deleting a provision authorizing the State Fire Marshal of the department to exempt a device from such standards; amending s. 624.307, F.S.; conforming provisions to changes made by the act; specifying requirements for the Chief Financial Officer in providing notice of electronic transmission of process documents; amending s. 624.423, F.S.; authorizing service of process by specified means; reenacting and amending s. 624.502, F.S.; specifying fees to be paid by the requestor to the department or Office of Insurance Regulation for certain service of process on authorized and unauthorized insurers; amending s. 626.907, F.S.; requiring a service of process fee for certain service of process made by the Chief Financial Officer; specifying the determination of a defendant's last known principal place of business; amending s. 626.921, F.S.; revising membership requirements of the Florida Surplus Lines Service Office board of governors; amending s. 627.7074, F.S.; providing an additional ground for disqualifying a neutral evaluator for disputed sinkhole insurance claims; creating s. 633.107, F.S.; authorizing the department to grant exemptions from disqualification for licensure or certification by the Division of State

Fire Marshal under certain circumstances; specifying the information an applicant must provide; providing the manner in which the department must render its decision to grant or deny an exemption; providing procedures for an applicant to contest the decision; providing an exception from certain requirements; authorizing the division to adopt rules; creating s. 633.135, F.S.; establishing the Firefighter Assistance Program for certain purposes; requiring the division to administer the program and annually award grants to qualifying fire departments; defining the term "combination fire department"; providing eligibility requirements; requiring the State Fire Marshal to adopt rules and procedures; providing program requirements; amending s. 633.208, F.S.; revising applicability of the Life Safety Code to exclude one-family and two-family dwellings, rather than only such dwellings that are newly constructed; amending s. 633.216, F.S.; conforming a cross-reference; amending s. 633.408, F.S.; revising firefighter and volunteer firefighter certification requirements; specifying the duration of certain firefighter certifications; amending s. 633.412, F.S.; deleting a requirement that the division suspend or revoke all issued certificates if an individual's certificate is suspended or revoked; amending s. 633.414, F.S.; conforming provisions to changes made by the act; revising alternative requirements for renewing specified certifications; providing grounds for denial of, or

disciplinary action against, certifications for a firefighter or volunteer firefighter; amending s. 633.426, F.S.; revising a definition; providing a date after which an individual is subject to revocation of certification under specified circumstances; providing an effective date.

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

Section 1. Subsection (3) of section 48.151, Florida Statutes, is amended to read:

48.151 Service on statutory agents for certain persons.—

(3) The Chief Financial Officer or his or her assistant or deputy or another person in charge of the office is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, warranty associations under chapter 634, prepaid limited health service organizations under chapter 636, and persons required to file statements under s. 628.461. As an alternative to service of process made by mail or personal service on the Chief Financial Officer, on his or her assistant or deputy, or on another person in charge of the office, the Department of Financial Services may create an Internet-based transmission system to accept service of process by electronic transmission of documents.

Section 2. Subsection (1) of section 110.1315, Florida

Statutes, is amended to read:

110.1315 Alternative retirement benefits; other-personal-services employees.—

(1) ~~Upon review and approval by the Executive Office of the Governor,~~ The Department of Financial Services shall provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The Department of Financial Services may contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code. The Department of Financial Services may develop a request for proposals and solicit qualified vendors to compete for the award of the contract. A vendor shall be selected on the basis of the plan that best serves the interest of the participating employees and the state. The proposal must comply with all necessary federal and state laws and rules.

Section 3. Paragraph (a) of subsection (4) and subsection (12) of section 112.215, Florida Statutes, are amended to read:

112.215 Government employees; deferred compensation program.—

(4)(a) The Chief Financial Officer, with the approval of the State Board of Administration, shall establish such plan or plans of deferred compensation for state employees and may include persons employed by a state university as defined in s. 1000.21, a special district as defined in s. 189.012, or a water management district as defined in s. 189.012, including all such

investment vehicles or products incident thereto, as may be available through, or offered by, qualified companies or persons, and may approve one or more such plans for implementation by and on behalf of the state and its agencies and employees.

(12) The Chief Financial Officer may adopt any rule necessary to administer and implement this act with respect to deferred compensation plans for state employees and persons employed by a state university as defined in s. 1000.21, a special district as defined in s. 189.012, or a water management district as defined in s. 189.012.

Section 4. Section 137.09, Florida Statutes, is amended to read:

137.09 Justification and approval of bonds.—Each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. Every such bond shall be approved by the board of county commissioners ~~and by the Department of Financial Services~~ when the board is ~~they and it are~~ satisfied in its ~~their~~ judgment that the bond ~~same~~ is legal, sufficient, and proper to be approved.

Section 5. Present paragraphs (h) through (y) of subsection (2) of section 215.97, Florida Statutes, are redesignated as paragraphs (i) through (z), respectively, a new paragraph (h) is added to that subsection, paragraph (a) and present paragraphs (m) and (v) of that subsection and paragraph (o) of subsection (8) are amended, present subsections (9), (10), and (11) of that

section are renumbered as subsections (10), (11), and (12), respectively, and a new subsection (9) is added to that section, to read:

215.97 Florida Single Audit Act.—

(2) ~~Definitions;~~ As used in this section, the term:

(a) "Audit threshold" means the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 ~~$500,000~~ in any fiscal year of such nonstate entity shall be required to have a state single audit, or a project-specific audit, for such fiscal year in accordance with the requirements of this section. Every 2 years the Auditor General, after consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, shall review the threshold amount for requiring audits under this section and may adjust such threshold amount consistent with the purposes of this section.

(h) "Higher education entity" means a Florida College System institution or a state university, as those terms are defined in s. 1000.21.

(n) ~~(m)~~ "Nonstate entity" means a local governmental entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance.

(w) ~~(v)~~ "State project-specific audit" means an audit of one state project performed in accordance with the requirements of subsection (11) ~~(10)~~.

(8) Each recipient or subrecipient of state financial

assistance shall comply with the following:

(o) A higher education entity is exempt from the requirements of paragraph (2)(a) and this subsection ~~A contract involving the State University System or the Florida College System funded by state financial assistance may be in the form of:~~

~~1. A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;~~

~~2. A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;~~

~~3. A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or~~

~~4. A combination of the contract forms described in subparagraphs 1., 2., and 3~~.

(9) This subsection applies to any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance.

(a) The contract or agreement must comply with ss. 215.971(1) and 216.3475 and must be in the form of one or a combination of the following:

1. A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.

2. A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.

3. A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

(b) If a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, none of the requirements of this section apply to the conduit higher education entity. However, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the requirements of this subsection and subsection (8).

(c) Regardless of the amount of the state financial assistance, this subsection does not exempt a higher education entity from compliance with provisions of law that relate to maintaining records concerning state financial assistance to the higher education entity or that allow access and examination of those records by the state awarding agency, the higher education entity, the Department of Financial Services, or the Auditor General.

(d) This subsection does not prohibit the state awarding agency from including terms and conditions in the contract or agreement which require additional assurances that the state financial assistance meets the applicable requirements of laws, regulations, and other compliance rules.

Section 6. Subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital

image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and may be made and issued only:

(a) For departmental administrative purposes;

(b) For the issuance of duplicate licenses;

(c) In response to law enforcement agency requests;

(d) To the Department of Business and Professional Regulation and the Department of Health pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the Department of Business and Professional Regulation or the Department of Health;

(e) To the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters in accordance with ss. 98.045 and 98.075;

(f) To the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D cases;

(g) To the Department of Children and Families pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415;

(h) To the Department of Children and Families pursuant to an interagency agreement specifying the number of employees in each of that department’s regions to be granted access to the records for use as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations;

(i) To the Agency for Health Care Administration pursuant to an interagency agreement for the purpose of authorized agencies verifying photographs in the Care Provider Background Screening Clearinghouse authorized under s. 435.12;

(j) To the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, ~~and~~ the identification of fraudulent or false claims, and the investigation of allegations of violations of the insurance code by licensees and unlicensed persons;

(k) To district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of kin of any investigations, including autopsies and other laboratory examinations, authorized in s. 406.11; or

(l) To the following persons for the purpose of identifying a person as part of the official work of a court:

1. A justice or judge of this state;

2. An employee of the state courts system who works in a position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or by his or her designee; or

3. A government employee who performs functions on behalf of the state courts system in a position that is designated in writing for access by the Chief Justice or a chief judge, or by his or her designee.

Section 7. Subsection (2) of section 374.983, Florida Statutes, is amended to read:

374.983 Governing body.—

(2) The present board of commissioners of the district shall continue to hold office until their respective terms shall expire. Thereafter the members of the board shall continue to be appointed by the Governor for a term of 4 years and until their successors shall be duly appointed. Specifically, commencing on January 10, 1997, the Governor shall appoint the commissioners from Broward, Indian River, Martin, St. Johns, and Volusia Counties and on January 10, 1999, the Governor shall appoint the commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm Beach, and St. Lucie Counties. The Governor shall appoint the commissioner from Nassau County for an initial term that coincides with the period remaining in the current terms of the commissioners from Broward, Indian River, Martin, St. Johns, and Volusia Counties. Thereafter, the commissioner from Nassau County shall be appointed to a 4-year term. Each new appointee must be confirmed by the Senate. Whenever a vacancy occurs among the commissioners, the person appointed to fill such vacancy shall hold office for the unexpired portion of the term of the commissioner whose place he or she is selected to fill. Each commissioner under this act before he or she assumes office shall be required to give a good and sufficient surety bond in the sum of $10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of his or her office, such bond to be approved by and filed with the board of commissioners of the district ~~Chief Financial Officer~~. Any and all premiums upon such surety bonds shall be paid by the board of commissioners of such district as a necessary expense of the district.

Section 8. Subsection (4) of section 509.211, Florida

Statutes, is amended to read:

509.211 Safety regulations.—

(4) Every enclosed space or room that contains a boiler regulated under chapter 554 which is fired by the direct application of energy from the combustion of fuels and that is located in any portion of a public lodging establishment that also contains sleeping rooms shall be equipped with one or more carbon monoxide detector ~~sensor~~ devices that bear the certification mark from a testing and certification organization accredited in accordance with ISO/IEC Guide 65, General Requirements for Bodies Operating Product Certification Systems, ~~label of a nationally recognized testing laboratory~~ and that have been tested and listed as complying with the most recent Underwriters Laboratories, Inc., Standard 2075 ~~2034~~, or its equivalent~~, unless it is determined that carbon monoxide hazards have otherwise been adequately mitigated as determined by the Division of State Fire Marshal of the Department of Financial Services~~. Such devices shall be integrated with the public lodging establishment's fire detection system. Any such installation or determination shall be made in accordance with rules adopted by the Division of State Fire Marshal.

Section 9. Subsection (9) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(9) Upon receiving service of legal process issued in any civil action or proceeding in this state against any regulated person or any unauthorized insurer under s. 626.906 or s. 626.937 which is required to appoint the Chief Financial Officer as its attorney to receive service of all legal process, the

Chief Financial Officer, as attorney, may, in lieu of sending the process by registered or certified mail, send the process or make it available by any other verifiable means, including, but not limited to, making the documents available by electronic transmission from a secure website established by the department to the person last designated by the regulated person or the unauthorized insurer to receive the process. When process documents are made available electronically, the Chief Financial Officer shall send a notice of receipt of service of process to the person last designated by the regulated person or unauthorized insurer to receive legal process. The notice must state the date and manner in which the copy of the process was made available to the regulated person or unauthorized insurer being served and contain the uniform resource locator (URL) for a hyperlink to access files and information on the department's website to obtain a copy of the process.

Section 10. Section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(1) Service of process upon the Chief Financial Officer as process agent of the insurer ~~(~~under ss. ~~s.~~ 624.422 and 626.937~~)~~ shall be made by serving a copy of the process upon the Chief Financial Officer or upon her or his assistant, deputy, or other person in charge of her or his office. Service may also be made by mail or electronically as provided in s. 48.151. Upon receiving such service, the Chief Financial Officer shall retain a record copy and promptly forward one copy of the process by registered or certified mail or by other verifiable means, as provided under s. 624.307(9), to the person last designated by

the insurer to receive the same, as provided under s. 624.422(2). For purposes of this section, records may be retained as paper or electronic copies.

(2) If ~~Where~~ process is served upon the Chief Financial Officer as an insurer's process agent, the insurer is ~~shall~~ not ~~be~~ required to answer or plead except within 20 days after the date upon which the Chief Financial Officer sends or makes available by other verifiable means ~~mailed~~ a copy of the process served upon her or him as required by subsection (1).

(3) Process served upon the Chief Financial Officer and sent or made available in accordance with this section and s. 624.307(9) ~~copy thereof forwarded as in this section provided~~ shall for all purposes constitute valid and binding service thereof upon the insurer.

Section 11. Notwithstanding the expiration date in section 41 of chapter 2015-222, Laws of Florida, section 624.502, Florida Statutes, as amended by chapter 2013-41, Laws of Florida, is reenacted and amended to read:

624.502 Service of process fee.—In all instances as provided in any section of the insurance code and s. 48.151(3) in which service of process is authorized to be made upon the Chief Financial Officer or the director of the office, the party requesting service ~~plaintiff~~ shall pay to the department or office a fee of $15 for such service of process on an authorized insurer or $25 for such service of process on an unauthorized insurer, which fee shall be deposited into the Administrative Trust Fund.

Section 12. Subsection (1) of section 626.907, Florida Statutes, is amended to read:

626.907 Service of process; judgment by default.—

(1) Service of process upon an insurer or person representing or aiding such insurer pursuant to s. 626.906 shall be made by delivering to and leaving with the Chief Financial Officer, his or her assistant or deputy, or another person in charge of the ~~or some person in apparent charge of his or her~~ office two copies thereof and the service of process fee as required in s. 624.502. The Chief Financial Officer shall forthwith mail by registered mail, commercial carrier, or any verifiable means, one of the copies of such process to the defendant at the defendant's last known principal place of business as provided by the party submitting the documents and shall keep a record of all process so served upon him or her. The service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the defendant's last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

Section 13. Paragraph (a) of subsection (4) of section 626.921, Florida Statutes, is amended to read:

626.921 Florida Surplus Lines Service Office.—

(4) The association shall operate under the supervision of a board of governors consisting of:

(a) Five individuals nominated by the Florida Surplus Lines Association and appointed by the department from the regular membership of the Florida Surplus Lines Association.

Each board member shall be appointed to serve beginning on the date designated by the plan of operation and shall serve at the pleasure of the department for a 3-year term, such term initially to be staggered by the plan of operation so that three appointments expire in 1 year, three appointments expire in 2 years, and three appointments expire in 3 years. Members may be reappointed for subsequent terms. The board of governors shall elect such officers as may be provided in the plan of operation.

Section 14. Paragraph (a) of subsection (7) of section 627.7074, Florida Statutes, is amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. The department shall allow the parties to submit requests to disqualify evaluators on the list for cause.

(a) The department shall disqualify neutral evaluators for cause based only on any of the following grounds:

1. A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.

2. The proposed neutral evaluator has, in a professional capacity, previously represented either party or a

representative of either party in the same or a substantially related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

4. The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of any party to the case.

5. The proposed neutral evaluator has, within the preceding 5 years, worked for any entity that performed any sinkhole loss testing, review, or analysis for the property.

Section 15. Section 633.107, Florida Statutes, is created to read:

633.107 Exemption from disqualification from licensure or certification.—

(1) The department may grant an exemption from disqualification to any person disqualified from licensure or certification by the Division of State Fire Marshal under this chapter because of a criminal record or dishonorable discharge from the United States Armed Forces if the applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, cost of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense and:

(a) At least 5 years have elapsed since the applicant

completed or has been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense; or

(b) At least 5 years have elapsed since the applicant was dishonorably discharged from the United States Armed Forces.

(2) For the department to grant an exemption, the applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or property if permitted to be licensed or certified under this chapter, evidence of which must include, but need not be limited to, facts and circumstances surrounding the disqualifying offense, the time that has elapsed since the offense, the nature of the offense and harm caused to the victim, the applicant's history before and after the offense, and any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be licensed or certified.

(3) The department has discretion whether to grant or deny an exemption. The department shall provide its decision in writing which, if the exemption is denied, must state with particularity the reasons for denial. The department's decision is subject to proceedings under chapter 120, except that a formal proceeding under s. 120.57(1) is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.

(4) An applicant may request an exemption, notwithstanding the time limitations of paragraphs (1)(a) and (b), if by executive clemency his or her civil rights are restored, or he or she receives a pardon, from the disqualifying offense. The fact that the applicant receives executive clemency does not

alleviate his or her obligation to comply with subsection (2) or in itself require the department to award the exemption.

(5) The division may adopt rules to administer this section.

Section 16. Section 633.135, Florida Statutes, is created to read:

633.135 Firefighter Assistance Grant Program.—

(1) The Firefighter Assistance Grant Program is created within the division to improve the emergency response capability of volunteer fire departments and combination fire departments. The program shall provide financial assistance to improve firefighter safety and enable such fire departments to provide firefighting, emergency medical, and rescue services to their communities. For purposes of this section, the term "combination fire department" means a fire department composed of a combination of career and volunteer firefighters.

(2) The division shall administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist such fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. However, the division shall prioritize the annual award of grants to such fire departments in a county having a population of 75,000 or less.

(3) The State Fire Marshal shall adopt rules and procedures for the program that require grant recipients to:

(a) Report their activity to the division for submission in

the Fire and Emergency Incident Information Reporting System created pursuant to s. 633.136;

(b) Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;

(c) Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536;

(d) Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and

(e) Meet the definition of the term "fire service provider" in s. 633.102.

(4) Funds shall be used to:

(a) Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion pursuant to s. 633.408. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division's electronic database.

(b) Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear, that complies with NFPA No. 1851, "Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting," by the National Fire Protection Association.

(c) Purchase self-contained breathing apparatus equipment that complies with NFPA No. 1852, "Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus."

(d) Purchase fire engine pumper apparatus equipment. Funds

provided under this paragraph may be used to purchase the equipment or subsidize a federal grant from the Federal Emergency Management Agency to purchase the equipment.

Section 17. Subsection (8) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(8) The provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to ~~newly constructed~~ one-family and two-family dwellings. However, fire sprinkler protection may be permitted by local government in lieu of other fire protection-related development requirements for such structures. While local governments may adopt fire sprinkler requirements for one- and two-family dwellings under this subsection, it is the intent of the Legislature that the economic consequences of the fire sprinkler mandate on home owners be studied before the enactment of such a requirement. After the effective date of this act, any local government that desires to adopt a fire sprinkler requirement on one- or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one- or two-family dwellings or any proposed residential subdivision. The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property. The report must include an assessment of the cost savings from any reduced or eliminated impact fees if applicable, the reduction in special fire district tax, insurance fees, and other taxes or fees imposed, and the waiver of certain infrastructure requirements including the reduction of roadway widths, the reduction of water line sizes, increased fire

hydrant spacing, increased dead-end roadway length, and a reduction in cul-de-sac sizes relative to the costs from fire sprinkling. A failure to prepare an economic report shall result in the invalidation of the fire sprinkler requirement to any one- or two-family dwelling or any proposed subdivision. In addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-fire sprinklered dwelling, on the basis that a one- or two-family dwelling unit is protected by a fire sprinkler system.

Section 18. Subsection (2) of section 633.216, Florida Statutes, is amended to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents or persons authorized to enforce laws and rules of the State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(2) Except as provided in s. 633.312(2), every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal.

Such person shall meet the requirements of s. 633.412(1)-(4) ~~s. 633.412(1)(a)-(d)~~, and:

(a) Have satisfactorily completed the firesafety inspector certification examination as prescribed by division rule; and

(b)1. Have satisfactorily completed, as determined by division rule, a firesafety inspector training program of at least 200 hours established by the department and administered by education or training providers approved by the department for the purpose of providing basic certification training for firesafety inspectors; or

2. Have received training in another state which is determined by the division to be at least equivalent to that required by the department for approved firesafety inspector education and training programs in this state.

Section 19. Paragraph (b) of subsection (4) and subsection (8) of section 633.408, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(4) The division shall issue a firefighter certificate of compliance to an individual who does all of the following:

(b) Passes the Minimum Standards Course examination within 12 months after completing the required courses.

(8)(a) Pursuant to s. 590.02(1)(e), the division shall establish a structural fire training program of not less than 206 hours. The division shall issue to a person satisfactorily complying with this training program and who has successfully passed an examination as prescribed by the division and who has met the requirements of s. 590.02(1)(e), a Forestry Certificate

of Compliance.

(b) An individual who holds a current and valid Forestry Certificate of Compliance is entitled to the same rights, privileges, and benefits provided for by law as a firefighter.

(9) A Firefighter Certificate of Compliance or a Volunteer Firefighter Certificate of Completion issued under this section expires 4 years after the date of issuance unless renewed as provided in s. 633.414.

Section 20. Section 633.412, Florida Statutes, is amended to read:

633.412 Firefighters; qualifications for certification.—

~~(1)~~ A person applying for certification as a firefighter must:

(1)~~(a)~~ Be a high school graduate or the equivalent, as the term may be determined by the division, and at least 18 years of age.

(2)~~(b)~~ Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country, or dishonorably discharged from any of the Armed Forces of the United States. "Convicted" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere, in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(3)~~(c)~~ Submit a set of fingerprints to the division with a current processing fee. The fingerprints will be forwarded to

the Department of Law Enforcement for state processing and forwarded by the Department of Law Enforcement to the Federal Bureau of Investigation for national processing.

(4)~~(d)~~ Have a good moral character as determined by investigation under procedure established by the division.

(5)~~(e)~~ Be in good physical condition as determined by a medical examination given by a physician, surgeon, or physician assistant licensed to practice in the state pursuant to chapter 458; an osteopathic physician, surgeon, or physician assistant licensed to practice in the state pursuant to chapter 459; or an advanced registered nurse practitioner licensed to practice in the state pursuant to chapter 464. Such examination may include, but need not be limited to, the National Fire Protection Association Standard 1582. A medical examination evidencing good physical condition shall be submitted to the division, on a form as provided by rule, before an individual is eligible for admission into a course under s. 633.408.

(6)~~(f)~~ Be a nonuser of tobacco or tobacco products for at least 1 year immediately preceding application, as evidenced by the sworn affidavit of the applicant.

~~(2) If the division suspends or revokes an individual's certificate, the division must suspend or revoke all other certificates issued to the individual by the division pursuant to this part.~~

Section 21. Section 633.414, Florida Statutes, is amended to read:

633.414 Retention of firefighter, volunteer firefighter, and fire investigator certifications ~~certification~~.—

(1) In order for a firefighter to retain her or his

Firefighter Certificate of Compliance, every 4 years he or she must meet the requirements for renewal provided in this chapter and by rule, which must include at least one of the following:

(a) Be active as a firefighter.~~;~~

(b) Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division.~~;~~

(c) Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule.~~; or~~

(d) Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408.

(2) In order for a volunteer firefighter to retain her or his Volunteer Firefighter Certificate of Completion, every 4 years he or she must:

(a) Be active as a volunteer firefighter; or

(b) Successfully complete a refresher course consisting of a minimum of 40 hours of training to be prescribed by rule.

(3) Subsection (1) does not apply to state-certified firefighters who are certified and employed full-time, as determined by the fire service provider, as firesafety inspectors or fire investigators, regardless of their ~~her or his~~ employment status as firefighters or volunteer firefighters ~~a firefighter~~.

(4) For the purposes of this section, the term "active"

means being employed as a firefighter or providing service as a volunteer firefighter for a cumulative period of 6 months within a 4-year period.

(5) The 4-year period begins upon issuance of the certificate or separation from employment~~:~~

~~(a) If the individual is certified on or after July 1, 2013, on the date the certificate is issued or upon termination of employment or service with a fire department~~.

~~(b) If the individual is certified before July 1, 2013, on July 1, 2014, or upon termination of employment or service thereafter.~~

(6) A certificate for a firefighter or volunteer firefighter expires if he or she fails to meet the requirements of this section.

(7) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firefighter or volunteer firefighter if the State Fire Marshal finds that any of the following grounds exists:

(a) Any cause for which issuance of a certificate could have been denied if it had then existed and had been known to the division.

(b) A violation of any provision of this chapter or any rule or order of the State Fire Marshal.

(c) Falsification of a record relating to any certificate issued by the division.

Section 22. Subsections (1) and (2) of section 633.426, Florida Statutes, are amended to read:

633.426 Disciplinary action; standards for revocation of certification.—

(1) For purposes of this section, the term:

(a) "Certificate" means any of the certificates issued under s. 633.406.

(b) "Certification" or "certified" means ~~the act of~~ holding a certificate that is current and valid and that meets the requirements for renewal of certification pursuant to this chapter and the rules adopted under this chapter ~~certificate~~.

(c) "Convicted" means a finding of guilt, or the acceptance of a plea of guilty or nolo contendere, in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(2) Effective July 1, 2013, an individual who holds a certificate is subject to revocation for any of the following ~~An individual is ineligible to apply for certification if the individual has, at any time, been~~:

(a) Conviction ~~Convicted~~ of a misdemeanor relating to the certification or to perjury or false statements.

(b) Conviction ~~Convicted~~ of a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof, or under the law of any other country.

(c) Dishonorable discharge ~~Dishonorably discharged~~ from any of the Armed Forces of the United States.

Section 23. This act shall take effect July 1, 2016.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 11, 2016

I respectfully request that **Senate Bill #992**, relating to **Department of Financial Services**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016
Meeting Date

SB 992
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic DFS

Name Elizabeth Boyd

Job Title Director of Legislative Affairs

Address 400 N Monroe Street
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Tallahassee FL 32399
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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	SB 994
INTRODUCER:	Senator Negron and others
SUBJECT:	Sunset Review of Medicaid Dental Services
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Brown	Pigott	AHS	**Recommend: Favorable**
3.	Brown	Kynoch	AP	**Favorable**

I. Summary:

SB 994 removes dental services as a required benefit from the Medicaid Managed Assistance (MMA) component of the Statewide Medicaid Managed Care (SMMC) program, effective March 1, 2019. The bill requires the Agency for Health Care Administration (AHCA) to provide the Governor, President of the Senate, and Speaker of the House of Representatives by December 1, 2016, a comprehensive report that examines how effective managed care plans within MMA have been in improving access, satisfaction, delivery, and value in dental services. The report must also examine historical trends in costs, utilization, and rates by plan and in the aggregate.

The Legislature may use the report to determine the scope of dental benefits in the Medicaid program in future managed care procurements and whether to provide dental benefits separate from medical benefits. If the Legislature takes no action before July 1, 2017, the AHCA is directed to implement a statewide competitive procurement for a separate dental program for children and adults with a choice of at least two vendors. Such dental care contracts must be for five years, be non-renewable, and include a medical loss ratio provision consistent with the requirement for health plans in the SMMC program.

The AHCA estimates the bill has a negative fiscal impact in general revenue of $225,000 in Fiscal Year 2016-2017, $261,428 in Fiscal Year 2017-2018, and $235,720 in Fiscal Year 2018-2019.

The bill is effective July 1, 2016.

II. Present Situation:

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan that must be approved by the federal

Centers for Medicare & Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the AHCA and financed with federal and state funds. Over 3.7 million Floridians are currently enrolled in Medicaid, and the program's estimated expenditures for the 2015-2016 fiscal year are over $23.4 billion.[1]

Statewide Medicaid Managed Care

In 2011, the Legislature established the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S.[2] The SMMC has two components: Long Term Care Managed Care (LTCMC) and Managed Medical Assistance (MMA). SMMC is an integrated, comprehensive, managed care program that provides for the delivery of primary and acute care in 11 regions through recipient enrollment in managed care plans.

To implement the two components and receive federal Medicaid funding, the AHCA received federal authorization through Medicaid waivers from CMS. The LTCMC waiver authority was approved on February 1, 2013, and is effective through June 30, 2016.[3]

The MMA component operates as a statewide expansion of the Medicaid Reform demonstration waiver that was originally approved in 2005 as a managed care pilot program in five counties. Waiver authority for MMA is effective through June 30, 2017.[4]

Managed care plan contracts for LTCMC and MMA include a provision requiring the managed care plans to report quarterly and annually on their respective medical loss ratios for the time period.[5] The medical loss ratio is based on data collected from all plans on a statewide basis and then classified consistent with 45 C.F.R., part 158. Under the applicable federal regulations, plans must achieve a medical loss ratio of 85 percent or provide a rebate to the state. Achieving an 85 percent medical loss ratio means that a managed care plan must spend at least 85 percent of the premiums received on health care services and activities to improve health care quality.[6]

Managed Medical Assistance (MMA)

For the MMA component of SMMC, health care services were bid competitively using the 11 specified regions. Thirteen non-specialty managed care plans contract with AHCA across the different regions. Specialty plans are also available to serve distinct populations or conditions, such as children with special health care needs, children in the child welfare system, HIV/AIDS,

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[1] Office of Economic and Demographic Research, *Social Services Estimating Conference of August 4, 2015,* http://edr.state.fl.us/Content/conferences/medicaid/medltexp.pdf (last visited Dec. 11, 2015).
[2] *See* Chapter Laws, 2011-134 and 2011-135.
[3] Department of Health and Human Services, Disabled & Elderly Health Programs Group, *Approval Letter to Agency for Health Care Administration* (February 1, 2013), http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Signed_approval_FL0962_new_1915c_02-01-2013.pdf (last visited Dec. 17, 2015).
[4] Department of Health and Human Services, Centers for Medicare & Medicaid Services, *Medicaid 1115 Demonstration Fact Sheet* (July 31, 2014), *http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/fl/fl-medicaid-reform-fs.pdf* (last visited Dec. 21, 2015).
[5] *See* s. 409.967(4), F.S.
[6] 45 C.F.R. §158.251 (2012).

serious mental illness, chronic obstructive pulmonary disease, congestive heart failure, or cardiovascular disease.

Statewide implementation of MMA started May 1, 2014, and was completed by August 1, 2014. MMA contracts were executed for a five-year period, and the current contracts are valid through August 31, 2019.

States determine the level of benefits offered in their own Medicaid program, provided that certain mandatory federal benefits are covered. Florida details its minimum benefits under s. 409.973, F.S., for those enrollees in MMA plans. A comparison of those mandatory minimum benefits are shown in the table below.

Comparison of Mandatory Medicaid Benefits	
Federal Mandatory Benefits[7]	**Florida Managed Medical Assistance (s. 409.973, F.S.)**
Inpatient hospital services	Inpatient hospital services
Outpatient hospital services	Outpatient hospital services
Early and periodic screening, diagnostic and treatment services (EPSDT)	Early and periodic screening, diagnostic and treatment services (EPSDT)
Nursing facility services	Nursing care
Home health services	Home health agency services
Physician services	Physician services, including physician assistant services
Rural health clinic services	Rural health clinic services
Federally qualified health center services	Federally qualified health center services, to the extent required under s. 409.975, F.S.
Laboratory and X-ray services	Laboratory and X-ray services
Family planning services	Family planning services
Nurse midwife services	Healthy start services
Certified pediatric and family nurse practitioner services	Advanced registered nurse practitioner services
Freestanding birth center services (when licensed or otherwise recognized)	Birthing center services
Transportation to medical care	Transportation to access covered services
Tobacco cessation counseling for pregnant women	Substance abuse treatment services
	Chiropractic services
	Ambulatory surgical treatment centers
	Dental services
	Emergency services
	Hospice services
	Medical supplies, equipment, prostheses, orthoses

[7] Medicaid.gov, *Benefits*, http://www.medicaid.gov/medicaid-chip-program-information/by-topics/benefits/medicaid-benefits.html (last visited Dec. 17, 2015).

Comparison of Mandatory Medicaid Benefits	
Federal Mandatory Benefits[7]	**Florida Managed Medical Assistance (s. 409.973, F.S.)**
	Mental health services
	Optical services and supplies
	Optometrist services
	Physical, occupational, respiratory, and speech therapy services
	Podiatric services
	Prescription drugs
	Renal dialysis services
	Respiratory equipment and supplies

A contracted MMA health plan, including specialty plans, must provide all state minimum benefits for an enrollee when medically necessary. Many MMA plans chose to supplement the state required minimum benefits by offering enhanced options, such as expanded adult dental, hearing and vision coverage, outpatient hospital coverage, and physician services.

Most Medicaid recipients must be enrolled in the MMA program. Those individuals who are not required to enroll, but may choose to do so, are:
- Recipients who have other creditable coverage, excluding Medicare;
- Recipients who reside in residential commitment facilities through the Department of Juvenile Justice or mental health treatment facilities under s. 394.455(32), F.S.;
- Persons eligible for refugee assistance;
- Residents of a developmental disability center;
- Enrollees in the developmental disabilities home and community based waiver or those waiting for waiver services; and
- Children in a prescribed pediatric extended care center.[8]

Other Medicaid enrollees are exempt from the MMA program and receive Medicaid services on a fee-for-service basis. Exempt enrollees are:
- Women who are eligible for family planning services only;
- Women who are eligible only for breast and cervical cancer services; and
- Persons eligible for emergency Medicaid for aliens.

Non-MMA enrollees receiving services through fee-for-service have the same mandatory minimum benefits. These benefits are described under s. 409.905, F.S.

History of Prepaid Dental Plans

Comprehensive dental benefits are required for children at both the federal and state level, and coverage includes diagnostic, preventive, or corrective procedures, including orthodontia.[9,10] MMA plans are required to provide adult dental coverage to the extent of covering medically

[8] Section 409.972, F.S.
[9] 42 U.S.C. 1396d(a)(i)
[10] *See* Section 409.906(6), F.S.

necessary emergency procedures to eliminate pain or infection. Adult dental care may be restricted to emergency oral examinations, necessary radiographs, extractions, and incisions and drainage of abscesses. Full or partial dentures may also be provided under certain circumstances.[11]

Prior to SMMC, dental coverage was delivered either through pre-paid dental health plans (PDHP) or individual providers using fee-for-service arrangements. PDHPs were first initiated in the Medicaid program in the 2001-2002 state fiscal year when proviso language in the 2001-2002 General Appropriations Act (GAA) authorized the AHCA to initiate a PDHP pilot program in Miami-Dade County.[12] The following chart provides a brief overview of the history of Medicaid prepaid dental health. Further elaboration is provided in subsequent paragraphs.

Brief Overview of Medicaid Prepaid Dental Plan History	
Year	**Dental Delivery Systems**
2001-2002 SFY	Legislature authorized AHCA to initiate PDHP pilot in Miami-Dade County.
2003-2004 SFY	Legislature authorized AHCA to contract on competitive basis using PDHPs; AHCA executed the first PDHP contract in 2004 in Miami-Dade for children.
2010-2011 SFY	Legislature authorized time-limited statewide PDHP competitive procurement, excluding the existing service programs in Miami-Dade and Medicaid Reform counties.
2012-2013 SFY	Legislature provided that Medicaid dental services should not be limited to PDHPs and also authorized fee-for-service dental services as well; Statewide PDHP program implemented in December 2012 for children.
July 1, 2013	Fee-for-service dental care option ended.
May 1, 2014	MMA roll-out began; PDHP contracts were terminated by region as MMA was implemented.
August 1, 2014	Completion of MMA roll-out; end of PDHP contracts.

The 2003 Legislature again authorized the AHCA to contract on a prepaid or fixed sum basis for dental services for Medicaid-eligible recipients specifically using PDHPs.[13] Through a competitive bid process, the AHCA executed its first PDHP contract in 2004 to serve children under age 21 in Miami-Dade County.[14]

The Legislature added proviso in the 2010-2011 GAA authorizing the AHCA to contract by competitive procurement with one or more prepaid dental plans on a regional or statewide basis for a period not to exceed two years, in all counties except those participating in Miami-Dade County and Medicaid Reform, under a fee-for-service or managed care delivery system.[15]

[11] *See* Section 409.906(1), F.S.
[12] *See* Specific Proviso 135A, General Appropriations Act 2001-2002 (Conference Report on CS/SB 2C).
[13] Chapter 2003-405, Laws of Fla.
[14] Agency for Health Care Administration, *House Bill 27 Analysis*, p. 2, (Nov. 11, 2013) (on file with the Senate Committee on Health Policy).
[15] *See* Specific Proviso 204, General Appropriations Act 2010-2011 (Conference Report on HB 5001).

The Legislature included proviso in the 2012-2013 GAA requiring that for all counties other than Miami-Dade, the AHCA could not limit Medicaid dental services to prepaid plans and must allow qualified dental providers to provide services on a fee-for-service basis.[16] Similar language was also passed in the 2012-2013 appropriations implementing bill, which included additional directives to the AHCA to terminate existing contracts, as needed. The 2012-2013 implementing bill provisions became obsolete on July 1, 2013.

Two vendors were selected for a statewide program starting in 2012-2013 and contracts were implemented effective December 1, 2012.[17] Under the program, Medicaid recipients selected one of the two PDHPs in their county for dental services. The existing dental plan contracts covered Medicaid recipients under age 21. Dental care through Medicaid fee-for-service providers ended July 1, 2013.

The Invitation to Negotiate (ITN) for PDHP limited renewal for the contracts to no more than a three-year period; however, with the final implementation of SMMC and the integration of dental coverage within MMA managed care plans, these PDHP contracts were non-renewed as each region under MMA was implemented.[18] MMA began its regional roll-out on May 1, 2014, and completed the final regions on August 1, 2014.

While the MMA plans are required to collect data, including data related to access to care and quality, no formalized data is available yet which compares the different dental care delivery systems. However, the AHCA's health care information website, www.floridahealthfinder.gov, includes member satisfaction in Medicaid and quality of care indicators for health plans. The most recent member satisfaction surveys are from 2015.[19]

III. Effect of Proposed Changes:

Section 1 amends s. 409.973, F.S., to remove dental services from the list of minimum benefits that managed care plans must cover under MMA, effective March 1, 2019.

Section 2 amends s. 409.973, F.S., to require the AHCA to provide the Governor, the President of the Senate, and Speaker of the House of Representatives, a report on the provision of dental services in MMA by December 1, 2016. The AHCA may contract with an independent third party to assist with the report. The bill requires several components that must be included in the report:

- The effectiveness of the managed care plans in:
  - Increasing access to dental care;
  - Improving dental health;
  - Achieving satisfactory outcomes for recipients and providers; and

[16] *See* Specific Proviso 186, General Appropriations Act 2012-2013 (Conference Report on HB 5001).
[17] Six counties were excluded from the statewide roll-out. Miami-Dade was excluded because of the prepaid dental program that has been in existence since 2004. Baker, Broward, Clay, Duval and Nassau counties were excluded because they were part of the Medicaid Reform Pilot Project, which requires most Medicaid recipients to enroll in managed care plans that provide dental care as a covered service.
[18] Agency for Health Care Administration, *supra* note 8 at 5.
[19] *See* Agency for Health Care Administration, *FloridaHealthFinder.gov*, http://www.floridahealthfinder.gov/HealthPlans/Default.aspx (last visited Jan. 4, 2016).

- Delivering value and transparency to the state's taxpayers;
- The historical trends of rates paid to dental providers and dental plan subcontractors;
- Participation rates in plan networks; and
- Provider willingness to treat Medicaid recipients.

The bill also requires the report to review rate and participation trends by plan and in the aggregate. A comparison of current and historical efforts and trends and the experiences of other states in delivering dental services, increasing patient access, and improving dental care, must also be included.

The bill provides that findings of the report may be used:
- By the Legislature to set future minimum benefits for MMA; and
- For future procurement of dental services, including whether to include dental services as a minimum benefit via comprehensive MMA plans or to provide dental services as a separate benefit.

Under the bill, if the Legislature takes no action before July 1, 2017, with regard to the report's findings:
- The AHCA must implement a statewide Medicaid prepaid dental health program for children and adults with a choice of at least two licensed dental managed care providers who have substantial experience in providing care to Medicaid enrollees and children eligible for medical assistance under Title XXI of the Social Security Act and who meet all AHCA standards and requirements;
- Prepaid dental contracts must be awarded through a competitive procurement for a five-year period and may not be renewed; however, the AHCA may extend the term of a plan contract to cover any transition delays to a new plan provider;
- All prepaid dental contracts must include a medical loss ratio provision consistent with s. 409.967(4), F.S., which is applicable to comprehensive health plans in SMMC; and
- The AHCA is granted authority to seek any necessary state plan amendments or federal waivers in order to begin enrollment in prepaid dental plans no later than March 1, 2019.

Section 3 provides an effective date of July 1, 2016.

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:

Today, most of the Medicaid managed care plans subcontract with private sector dental managed care plans or prepaid dental health plans to deliver dental services to Medicaid enrollees. All MMA plans currently include some form of enhanced adult dental services.[20] A smaller portion of Medicaid dental services are also still delivered directly via fee-for-service.

Between the managed care plans and other private providers, the private vendors serve almost 4 million enrollees through the Medicaid program.[21] If the Legislature determines that dental services should remain a minimum benefit in the MMA program but be procured separately, the dental plans that have contracts now may or may not retain those contracts through the competitive procurement process. The bill does not provide the incumbent providers any preference in the procurement process.

A new procurement process may also mean additional economic opportunities for other companies to provide services. Additionally, the MMA and LTCMC contracts are scheduled for rebid with implementation by 2019; therefore, if a decision is made to keep dental benefits as a minimum benefit, the managed care plans would seek dental care partners as part of that procurement process.

C. Government Sector Impact:

According to the AHCA, SB 994 requires budget authority of $450,000 in state fiscal year (SFY) 2016-2017; $522,856 in SFY 2017-18, and $471,440 in SFY 18-19. General revenue would be required for 50 percent while the remainder would be paid by federal funds.[22] The costs are detailed below:

- The AHCA must complete the report by December 1, 2016, and has authority under the bill to seek a third party's assistance with the report. The AHCA indicates that if the resources and expertise to perform the study do not exist internally, the agency will need approximately $250,000 to contract with a third-party consultant to conduct such an evaluation.[23]

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[20] Agency for Health Care Administration, *A Snapshot of the Florida Medicaid Managed Assistance Program* (December 2015), http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/SMMC_MMA_Snapshot.pdf (last visited Dec. 22, 2015).
[21] Agency for Health Care Administration, *Eligibles Report As of 10/31/2015*, http://ahca.myflorida.com/medicaid/Finance/data_analytics/eligibles_report/docs/age_assistance_category_2015-10-31.pdf (last visited Dec. 22, 2015).
[22] Agency for Health Care Administration, *Senate Bill 994 Analysis*, p. 10 (Jan. 6, 2016) (on file with the Senate Committee on Health Policy).
[23] Id at. 2.

- Included in the AHCA's fiscal note is a request for five full-time-equivalent (FTE) positions to implement the bill, hired over two fiscal years, plus funding for the agency's current actuarial firm. The AHCA also contemplates the need for additional resources for outside legal counsel for challenges to the competitive dental procurement awards.[24]

Fiscal Impact Estimated by the AHCA			
	FY 2016-2017	**FY 2017-2018**	**FY 2018-2019**
General Revenue			
Consultant for report	$125,000		
Actuarial services	$100,000	$100,000	$100,000
Legal services		$50,000	
New agency FTE		$111,428 ($6,791 NR*)	$135,720 ($4,527 NR*)
Total General Revenue	**$225,000**	**$261,428**	**$235,720**
Federal matching funds	$225,000	$261,428	$235,720
Total Fiscal Impact	**$450,000**	**$522,856**	**$471,440**

* Non-recurring funds

VI. Technical Deficiencies:

None.

VII. Related Issues:

Operationally, the AHCA notes it would need to seek waiver authority from the Centers for Medicare & Medicaid Services before the pre-paid dental program could be implemented and that waiver approval can take six to nine months to obtain.[25]

VIII. Statutes Affected:

This bill substantially amends section 409.973 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None

[24] Id at 3.
[25] Id.

By Senator Negron

32-00900A-16 2016994__

A bill to be entitled

An act relating to the sunset review of Medicaid Dental Services; amending s. 409.973, F.S.; providing for the future removal of dental services as a minimum benefit of managed care plans; requiring the Agency for Health Care Administration to provide a report to the Governor and the Legislature; specifying requirements for the report; providing for the use of the report's findings; requiring the agency to implement a statewide Medicaid prepaid dental health program upon the occurrence of certain conditions; specifying requirements for the program and the selection of providers; providing effective dates.

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

Section 1. Effective March 1, 2019, subsection (1) of section 409.973, Florida Statutes, is amended to read:

409.973 Benefits.—

(1) MINIMUM BENEFITS.—Managed care plans shall cover, at a minimum, the following services:

(a) Advanced registered nurse practitioner services.

(b) Ambulatory surgical treatment center services.

(c) Birthing center services.

(d) Chiropractic services.

~~(e) Dental services.~~

(e)~~(f)~~ Early periodic screening diagnosis and treatment services for recipients under age 21.

(f)~~(g)~~ Emergency services.

32-00900A-16 2016994__

(g)~~(h)~~ Family planning services and supplies. Pursuant to 42 C.F.R. s. 438.102, plans may elect to not provide these services due to an objection on moral or religious grounds, and must notify the agency of that election when submitting a reply to an invitation to negotiate.

(h)~~(i)~~ Healthy start services, except as provided in s. 409.975(4).

(i)~~(j)~~ Hearing services.

(j)~~(k)~~ Home health agency services.

(k)~~(l)~~ Hospice services.

(l)~~(m)~~ Hospital inpatient services.

(m)~~(n)~~ Hospital outpatient services.

(n)~~(o)~~ Laboratory and imaging services.

(o)~~(p)~~ Medical supplies, equipment, prostheses, and orthoses.

(p)~~(q)~~ Mental health services.

(q)~~(r)~~ Nursing care.

(r)~~(s)~~ Optical services and supplies.

(s)~~(t)~~ Optometrist services.

(t)~~(u)~~ Physical, occupational, respiratory, and speech therapy services.

(u)~~(v)~~ Physician services, including physician assistant services.

(v)~~(w)~~ Podiatric services.

(w)~~(x)~~ Prescription drugs.

(x)~~(y)~~ Renal dialysis services.

(y)~~(z)~~ Respiratory equipment and supplies.

(z)~~(aa)~~ Rural health clinic services.

(aa)~~(bb)~~ Substance abuse treatment services.

(bb) ~~(cc)~~ Transportation to access covered services.

Section 2. Subsection (5) is added to section 409.973, Florida Statutes, to read:

409.973 Benefits.—

(5) PROVISION OF DENTAL SERVICES.—

(a) The agency shall provide a comprehensive report on the provision of dental services under part IV of this chapter to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2016. The agency is authorized to contract with an independent third party to assist in the preparation of the report required by this paragraph.

1. The report must examine the effectiveness of medical managed care plans in increasing patient access to dental care, improving dental health, achieving satisfactory outcomes for Medicaid recipients and the dental provider community, providing outreach to Medicaid recipients, and delivering value and transparency to the state's taxpayers regarding the dollars intended for, and spent on, actual dental services. Additionally, the report must examine, by plan and in the aggregate, the historical trends of rates paid to dental providers and to dental plan subcontractors, dental provider participation in plan networks, and provider willingness to treat Medicaid recipients. The report must also compare current and historical efforts and trends and the experiences of other states in delivering dental services, increasing patient access to dental care, and improving dental health.

2. The Legislature may use the findings of this report in setting the scope of minimum benefits set forth in this section for future procurements of eligible plans as described in s.

409.966. Specifically, the decision to include dental services as a minimum benefit under this section, or to provide Medicaid recipients with dental benefits separate from the Medicaid managed medical assistance program described in part IV of this chapter, may take into consideration the data and findings of the report.

(b) In the event the Legislature takes no action before July 1, 2017, with respect to the report findings required under subparagraph (a)2., the agency shall implement a statewide Medicaid prepaid dental health program for children and adults with a choice of at least two licensed dental managed care providers who must have substantial experience in providing dental care to Medicaid enrollees and children eligible for medical assistance under Title XXI of the Social Security Act and who meet all agency standards and requirements. The contracts for program providers shall be awarded through a competitive procurement process. The contracts must be for 5 years and may not be renewed; however, the agency may extend the term of a plan contract to cover delays during a transition to a new plan provider. The agency shall include in the contracts a medical loss ratio provision consistent with s. 409.967(4). The agency is authorized to seek any necessary state plan amendment or federal waiver to commence enrollment in the Medicaid prepaid dental health program no later than March 1, 2019.

Section 3. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2016.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Chair*
Appropriations
Banking and Insurance
Ethics and Elections
Higher Education
Regulated Industries
Rules

SENATOR JOE NEGRON
32nd District

January 26, 2016

Tom Lee, Chair
Appropriations Committee
201 The Capitol
404 S Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 994

Dear Chairman Lee:

I would like to request Senate Bill 994 relating to sunset review of Medicaid dental services be placed on the agenda for the next scheduled committee meeting.

Thank you for your consideration of this request.

Sincerely yours,

Joe Negron
State Senator
District 32

JN/hd
c: Cindy Kynoch, Staff Director

REPLY TO:
☐ 3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665 FAX: (772) 219-1666
☐ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

994
Bill Number (if applicable)

Topic SUNSET OF DENTAL CARE

Amendment Barcode (if applicable)

Name LENA JUAREZ

Job Title

Address P.O. BOX 10390
Street

Phone 850 212 8330

TALLAHASSEE FL 32302
City *State* *Zip*

Email lenajejassoc.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing MOLINA HEALTHCARE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

994
Bill Number (if applicable)

Topic Sunset Review of Medicaid Dental Services

Amendment Barcode (if applicable)

Name Joe Anne Hart

Job Title Dir. of Governmental Affairs

Address 118 E. Jefferson St
Street
Tall, FL 32301
City *State* *Zip*

Phone (850) 224-1089

Email jahart@floridadental.org

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Florida Dental Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

994
Bill Number (if applicable)

Topic Sunset Review of Medicaid Dental Services
Amendment Barcode (if applicable)

Name Audrey Brown

Job Title President + C.E.O.

Address 200 W. College Ave
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	PCS/CS/SB 1026 (356798)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senator Simmons
SUBJECT:	High School Athletics
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bailey	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1026 modifies the membership, oversight, and related fees required by the Florida High School Athletic Association (FHSAA), the governing nonprofit organization for athletics in Florida public schools. Specifically, the bill:

- Allows private schools to join the FHSAA on a per-sport basis;
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis;
- Authorizes the commissioner to identify the other associations that govern interscholastic athletic competition in compliance with law;
- Prohibits the FHSAA from discouraging schools from simultaneously maintaining membership in the FHSAA and another athletic association; and
- Provides for an informal and formal appeals process for resolving student eligibility disputes.

The bill has no impact on state funds.

The bill takes effect on July 1, 2016.

II. Present Situation:

Florida High School Athletics

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization of athletics in Florida public schools in grades 6 through 12.[1] The FHSAA is not a state agency, but is assigned quasi-governmental functions.[2]

Membership in the FHSAA

Any high school in the state, including charter schools, virtual schools, and home education cooperatives,[3] may become a member of the FHSAA and participate in the activities of the FHSAA.[4] A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.[5] Membership in the FHSAA is not mandatory for any school.[6] The FHSAA is a membership-driven organization, encompassing 702 member combination schools[7] and senior high schools,[8] and 102 middle schools.[9]

The FHSAA may not deny or discourage interscholastic[10] competition between its member schools and non-FHSAA member schools, including members of another athletic governing organization, and is prohibited from taking retributory or discriminatory actions against member schools who participate in interscholastic competition with non-FHSAA member schools.[11]

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[1] Section 1006.20, F.S.
[2] *Id*.
[3] A home education cooperative is defined by the FHSAA as a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. Bylaw 3.2.2.4, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.
[4] Section 1006.20, F.S.
[5] *Id.*
[6] *Id.*
[7] A combination school is defined by the FHSAA as any traditional public school, charter school, virtual school, private school, or university laboratory school that provides instruction to students in both middle/junior high school grades and/or senior high school grades under the direction of a single principal and located on the same campus, except for 9-12 high schools which have 9th grade centers at a separate location, with participation and enrollment based on a single campus site. A combination school must hold membership as a middle school if its terminal grade is grade 6 through 8, as a junior high school if its terminal grade is grade 9, or as a senior high school if its terminal grade is grade 10 through 12. Bylaw 3.2.2.3, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.
[8] A senior high school is defined by the FHSAA as any traditional public school, charter school, virtual school, private school, or university laboratory school that provides instruction to students at one or more grade levels from 9 through 12. Bylaw 3.2.2.1, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.
[9] Florida High School Athletic Association, *Who we are* (2015), *available at* http://www.fhsaa.org/about.
[10] Bylaw 8.1.1, FHSAA defines an interscholastic contest as any competition between organized teams or individuals of different schools in a sport recognized or sanctioned by the FHSAA and is subject to all regulations pertaining to such contests. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.
[11] Section 1006.20, F.S.

Membership in the National Federation of State High School Associations

The National Federation of State High School Associations (NFSH) is the national leadership organization for high school athletic and performing arts activities.[12] The voting members must be state high school athletic associations.[13] The FHSAA is the voting member of the NFHS for Florida.[14] The FHSAA has been a member of the NFHS since 1926.[15] Affiliate membership, with rights of participation in meetings and activities, but without voting privileges, or eligibility for elected or appointed offices or assignments, may be granted to various organizations.[16] Affiliate members do not have sanctioning authority, as that lies with the voting member.[17]

A state high school athletic association may not become an affiliate member without the state's voting member approving of such affiliate membership.[18] Likewise, Florida statute provides that the FHSAA may not unreasonably withhold approval of an application to become an affiliate member of the NFHS that is submitted by an organization that governs interscholastic athletic competition in Florida. [19]

Appeals Process

The FHSAA procedures provide each student the opportunity to appeal an unfavorable ruling with regard to his or her eligibility to compete.[20]

The initial appeal is made to a committee on appeals within the administrative region where the student lives.[21] The FHSAA bylaws establish the number, size, and composition of each committee on appeals.[22] The bylaws specify the process and standards for eligibility determinations.[23]

The appeals process for eligibility violations are as follows:

- An appeal must be filed with the executive director to make the initial determination of ineligibility.[24]

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[12] NFHS membership includes, but is not limited to state high school athletic associations. Membership is divided into voting members and affiliate members National Federation of State High School Associations, *NFHS Brochure*, *available at* http://www.nfhs.org/media/885655/nfhs-company-brochure.pdf. *See*, ss. 2.1-2.2, NFHS Handbook.
[13] *See* s. 2.1, NFSH Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.
[14] National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, Directory of Member State Associations and Staff members, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf. Bylaw 1.1.4, FHSAA.
[15] National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, Directory of Member State Associations and Staff members, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.
[16] *See* s. 2.2, NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.
[17] *See* s. 2.21(c), NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.
[18] *See* ss. 2.2(e), 2.21(b) NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.
[19] Section 1006.20(1), F.S.
[20] Section 1006.20(7), F.S.
[21] *Id.*
[22] *Id.*
[23] Bylaw 10.4.1, FHSAA.
[24] Bylaw 10.6.1, FHSAA.

- An initial appeal is heard by the Sectional Appeals Committee.[25]
- Unfavorable decisions found on the initial appeal rendered by the Sectional Appeals Committee can be heard by the committee again, if new information is provided, or by the board of directors.[26]
- A request for mediation must be made in writing to the executive director, within 5 business days of the Sectional Appeals Committee hearing.[27]
- If the matter is unresolved, the notice of appeal must be in writing and received by the board of directors within 5 business days following the mediation session.[28]
- The decision of the board of directors in each case is by a majority vote and is final.[29]

III. Effect of Proposed Changes:

Florida High School Athletics

This bill modifies the membership provisions, oversight, and appeals process of the governing nonprofit organization of athletics in Florida. Specifically, the bill:

- Allows private schools to join the Florida High School Athletic Association (FHSAA) on a per-sport basis;
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis;
- Authorizes the commissioner to identify the other associations that govern interscholastic athletic competition in compliance with law;
- Prohibits the FHSAA from discouraging schools from simultaneously maintaining membership in the FHSAA and another athletic association; and
- Provides for an informal and formal appeals process for resolving student eligibility disputes.

Membership in the FHSAA

The bill:

- Allows a private school to join FHSAA as a full-time member or on a per-sport basis and authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis. This offers a school the option of joining other athletic associations by individual sport while maintaining membership in FHSAA for other sports; and
- Prohibits the FHSAA from taking retributory or discriminatory actions against members seeking membership in other associations for a sport for which they are not a member of the FHSAA.

Membership in the National Federation of State High School Associations

The bill limits the means by which the FHSAA may withhold approval of an association applying for a National Federation of State High School Associations affiliate membership by

[25] Bylaw 10.5.5, FHSAA.
[26] Bylaw 10.5.6, FHSAA.
[27] Bylaw 10.6.5.1, FHSAA.
[28] Bylaw 10.6.5.6, FHSAA.
[29] Bylaw 10.7.3.1, FHSAA.

providing that the Commissioner of Education, not the FHSAA, may determine whether the applicant that governs interscholastic athletic competition does so in compliance with law.

Appeals Process

The bill requires the FHSAA to provide an opportunity to resolve ineligibility determinations through an informal and formal appeal process.

The bill creates a new informal conference procedure to be held within 10 days of the initial ineligibility determination. The new informal process allows for a more timely resolution of student eligibility disputes. The bill allows for the informal conference to be held by telephone or by video conference, removing the requirement for a student to appear in person.

The bill specifies that the FHSAA must provide for a formal appeals process for the timely and cost-effective resolution of an eligibility dispute by a mutually agreed upon neutral third party. In effect, this could eliminate the cost of mediation which is currently shared equally by both parties.[30]

The bill requires the final determination to be issued no later than 30 days after the informal conference, unless there is an agreed upon extension.

The bill takes effect on July 1, 2016.

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.

[30] Bylaw 10.6.5.7, FHSAA.

B. Private Sector Impact:

Under PCS/CS/SB 1026, the Florida High School Athletics Association (FHSAA) may experience additional costs in adopting and implementing the eligibility appeals process required in the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.20 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Education on February 11, 2015:
The committee substitute:

- Removes the provision requiring any special event fees, sanctioning fees, or contest receipts collected annually by the FHSAA to not exceed the actual cost of performing the function that is the basis of the fee.
- Clarifies that the FHSAA must allow a private school to join the Florida High School Athletic Association (FHSAA) on a per-sport basis while authorizing the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis.

CS by Education Pre-K – 12 on January 14, 2016
The committee substitute revises the current process and standards for FHSAA determinations of eligibility and specifies for an informal and formal appealing process for resolving student eligibility disputes.

B. Amendments:

None.

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576-03414-16

Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to high school athletics; amending s. 1006.20, F.S.; requiring the Florida High School Athletic Association (FHSAA) to allow a private school to join the association as a full-time member or to join by sport; prohibiting the FHSAA from discouraging a private school from maintaining membership in the FHSAA and another athletic association; authorizing the FHSAA to allow a public school to apply for consideration to join another athletic association; prohibiting the FHSAA from taking any retributory or discriminatory action against specified schools; authorizing the Commissioner of Education to identify other associations in compliance with specified provisions; providing a process for resolving student eligibility disputes; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (1) and present paragraph (h) of subsection (2) of section 1006.20, Florida Statutes, are amended, present paragraphs (g) through (m) of that subsection are redesignated as paragraphs (h) through (n), respectively, and a new paragraph (g) is added to that subsection, to read:

1006.20 Athletics in public K-12 schools.—

(1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High

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576-03414-16

School Athletic Association (FHSAA) is designated as the governing nonprofit organization of athletics in Florida public schools. If the FHSAA fails to meet the provisions of this section, the commissioner shall designate a nonprofit organization to govern athletics with the approval of the State Board of Education. The FHSAA is not a state agency as defined in s. 120.52 but is~~. The FHSAA shall be~~ subject to ss. 1006.15-1006.19 ~~the provisions of s. 1006.19~~. ~~A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.~~ Any high school in the state, including private schools, traditional public schools, charter schools, virtual schools, and home education cooperatives, may become a member of the FHSAA and participate in the activities of the FHSAA. ~~However,~~ Membership in the FHSAA is not mandatory for any school. The FHSAA must allow a private school the option of joining the association as a full-time member or on a per-sport basis and may not prohibit or discourage a private school from simultaneously maintaining membership in the FHSAA and another athletic association. The FHSAA may allow a public school the option to apply for consideration to join another athletic association on a per-sport basis. The FHSAA may not deny or discourage interscholastic competition between its member schools and nonmember ~~non-FHSAA member Florida~~ schools, including members of another athletic association ~~governing organization~~, and may not take any retributory or discriminatory action against any of its member schools that seek to participate in interscholastic competition with nonmember ~~non-FHSAA member Florida~~ schools or any of its member schools that seek membership in other

associations for a sport for which they are not a member of the FHSAA. The FHSAA may not unreasonably withhold its approval of an application to become an affiliate member of the National Federation of State High School Associations submitted by any other association ~~organization~~ that governs interscholastic athletic competition in this state which meets the requirements of this section. The commissioner may identify other associations that govern interscholastic athletic competition in compliance with this section ~~The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them, are governed, unless otherwise specifically provided by statute~~. For the purposes of this section, "high school" includes grades 6 through 12.

(2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

(g) The FHSAA shall provide a process for the resolution of student eligibility disputes which includes the opportunity to use an informal conference procedure.

1. The FHSAA must provide written notice to the student athlete, parent, and member school stating specific findings of fact that support a determination of ineligibility. The student athlete, parent, or member school must request an informal conference within 10 days after receipt of such notice if intending to contest the determination. The informal conference must be held within 10 days after receipt of the request. The informal conference may be held by telephone or by video conference and, if video conference equipment is available, may be conducted at the student's school.

2. If the eligibility dispute is not resolved at the

informal conference and if requested by the student athlete, parent, or member school, the FHSAA must provide a formal process for the timely and cost-effective resolution of an eligibility dispute by a neutral third party whose decision is binding on the parties to the dispute. The neutral third party must be mutually agreed to by the parties and may be a retired or former judge, a dispute resolution professional approved by The Florida Bar or by the court in the circuit in which the dispute arose, or a certified mediator or arbitrator in the jurisdiction in which the dispute arose. If the parties cannot mutually agree on a neutral third party, the FHSAA must select a neutral third party at random from a list of dispute resolution professionals maintained by The Florida Bar.

3. A final determination regarding the eligibility dispute must be issued no later than 30 days after the informal conference, unless an extension is agreed upon by both parties.

(i) ~~(h)~~ In lieu of bylaws adopted under paragraph (h) ~~(g)~~, the FHSAA may adopt bylaws providing as a minimum the procedural safeguards of ss. 120.569 and 120.57, making appropriate provision for appointment of unbiased and qualified hearing officers.

Section 2. This act shall take effect July 1, 2016.

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 Appropriations

BILL:	CS/CS/SB 1026
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senator Simmons
SUBJECT:	High School Athletics
DATE:	February 18, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bailey	Klebacha	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1026 modifies the membership, oversight, and related fees required by the Florida High School Athletic Association (FHSAA), the governing nonprofit organization for athletics in Florida public schools. Specifically, the bill:

- Allows private schools to join the FHSAA on a per-sport basis;
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis;
- Authorizes the commissioner to identify the other associations that govern interscholastic athletic competition in compliance with law;
- Prohibits the FHSAA from discouraging schools from simultaneously maintaining membership in the FHSAA and another athletic association; and
- Provides for an informal and formal appeals process for resolving student eligibility disputes.

The bill has no impact on state funds.

The bill takes effect on July 1, 2016.

II. Present Situation:

Florida High School Athletics

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization of athletics in Florida public schools in grades 6 through 12.[1] The FHSAA is not a state agency, but is assigned quasi-governmental functions.[2]

Membership in the FHSAA

Any high school in the state, including charter schools, virtual schools, and home education cooperatives,[3] may become a member of the FHSAA and participate in the activities of the FHSAA.[4] A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.[5] Membership in the FHSAA is not mandatory for any school.[6] The FHSAA is a membership-driven organization, encompassing 702 member combination schools[7] and senior high schools,[8] and 102 middle schools.[9]

The FHSAA may not deny or discourage interscholastic[10] competition between its member schools and non-FHSAA member schools, including members of another athletic governing organization, and is prohibited from taking retributory or discriminatory actions against member schools who participate in interscholastic competition with non-FHSAA member schools.[11]

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[1] Section 1006.20, F.S.
[2] *Id*.
[3] A home education cooperative is defined by the FHSAA as a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. Bylaw 3.2.2.4, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.
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[7] A combination school is defined by the FHSAA as any traditional public school, charter school, virtual school, private school, or university laboratory school that provides instruction to students in both middle/junior high school grades and/or senior high school grades under the direction of a single principal and located on the same campus, except for 9-12 high schools which have 9th grade centers at a separate location, with participation and enrollment based on a single campus site. A combination school must hold membership as a middle school if its terminal grade is grade 6 through 8, as a junior high school if its terminal grade is grade 9, or as a senior high school if its terminal grade is grade 10 through 12. Bylaw 3.2.2.3, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.
[8] A senior high school is defined by the FHSAA as any traditional public school, charter school, virtual school, private school, or university laboratory school that provides instruction to students at one or more grade levels from 9 through 12. Bylaw 3.2.2.1, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), *available at* http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.
[9] Florida High School Athletic Association, *Who we are* (2015), *available at* http://www.fhsaa.org/about.
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A state high school athletic association may not become an affiliate member without the state's voting member approving of such affiliate membership.[18] Likewise, Florida statute provides that the FHSAA may not unreasonably withhold approval of an application to become an affiliate member of the NFHS that is submitted by an organization that governs interscholastic athletic competition in Florida. [19]

Appeals Process

The FHSAA procedures provide each student the opportunity to appeal an unfavorable ruling with regard to his or her eligibility to compete.[20]

The initial appeal is made to a committee on appeals within the administrative region where the student lives.[21] The FHSAA bylaws establish the number, size, and composition of each committee on appeals.[22] The bylaws specify the process and standards for eligibility determinations.[23]

The appeals process for eligibility violations are as follows:

- An appeal must be filed with the executive director to make the initial determination of ineligibility.[24]

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[13] *See* s. 2.1, NFSH Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.
[14] National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, Directory of Member State Associations and Staff members, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf. Bylaw 1.1.4, FHSAA.
[15] National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, Directory of Member State Associations and Staff members, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.
[16] *See* s. 2.2, NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.
[17] *See* s. 2.21(c), NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.
[18] *See* ss. 2.2(e), 2.21(b) NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, *available at* https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf.
[19] Section 1006.20(1), F.S.
[20] Section 1006.20(7), F.S.
[21] *Id.*
[22] *Id.*
[23] Bylaw 10.4.1, FHSAA.
[24] Bylaw 10.6.1, FHSAA.

- An initial appeal is heard by the Sectional Appeals Committee.[25]
- Unfavorable decisions found on the initial appeal rendered by the Sectional Appeals Committee can be heard by the committee again, if new information is provided, or by the board of directors.[26]
- A request for mediation must be made in writing to the executive director, within 5 business days of the Sectional Appeals Committee hearing.[27]
- If the matter is unresolved, the notice of appeal must be in writing and received by the board of directors within 5 business days following the mediation session.[28]
- The decision of the board of directors in each case is by a majority vote and is final.[29]

III. Effect of Proposed Changes:

Florida High School Athletics

This bill modifies the membership provisions, oversight, and appeals process of the governing nonprofit organization of athletics in Florida. Specifically, the bill:

- Allows private schools to join the Florida High School Athletic Association (FHSAA) on a per-sport basis;
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis;
- Authorizes the commissioner to identify the other associations that govern interscholastic athletic competition in compliance with law;
- Prohibits the FHSAA from discouraging schools from simultaneously maintaining membership in the FHSAA and another athletic association; and
- Provides for an informal and formal appeals process for resolving student eligibility disputes.

Membership in the FHSAA

The bill:

- Allows a private school to join FHSAA as a full-time member or on a per-sport basis and authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis. This offers a school the option of joining other athletic associations by individual sport while maintaining membership in FHSAA for other sports; and
- Prohibits the FHSAA from taking retributory or discriminatory actions against members seeking membership in other associations for a sport for which they are not a member of the FHSAA.

Membership in the National Federation of State High School Associations

The bill limits the means by which the FHSAA may withhold approval of an association applying for a National Federation of State High School Associations affiliate membership by

[25] Bylaw 10.5.5, FHSAA.
[26] Bylaw 10.5.6, FHSAA.
[27] Bylaw 10.6.5.1, FHSAA.
[28] Bylaw 10.6.5.6, FHSAA.
[29] Bylaw 10.7.3.1, FHSAA.

providing that the Commissioner of Education, not the FHSAA, may determine whether the applicant that governs interscholastic athletic competition does so in compliance with law.

Appeals Process

The bill requires the FHSAA to provide an opportunity to resolve ineligibility determinations through an informal and formal appeal process.

The bill creates a new informal conference procedure to be held within 10 days of the initial ineligibility determination. The new informal process allows for a more timely resolution of student eligibility disputes. The bill allows for the informal conference to be held by telephone or by video conference, removing the requirement for a student to appear in person.

The bill specifies that the FHSAA must provide for a formal appeals process for the timely and cost-effective resolution of an eligibility dispute by a mutually agreed upon neutral third party. In effect, this could eliminate the cost of mediation which is currently shared equally by both parties.[30]

The bill requires the final determination to be issued no later than 30 days after the informal conference, unless there is an agreed upon extension.

The bill takes effect on July 1, 2016.

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.

[30] Bylaw 10.6.5.7, FHSAA.

B. Private Sector Impact:

Under CS/CS/SB 1026, the Florida High School Athletics Association (FHSAA) may experience additional costs in adopting and implementing the eligibility appeals process required in the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.20 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 18, 2015:
The committee substitute:

- Removes the provision requiring any special event fees, sanctioning fees, or contest receipts collected annually by the FHSAA to not exceed the actual cost of performing the function that is the basis of the fee.
- Clarifies that the FHSAA must allow a private school to join the Florida High School Athletic Association (FHSAA) on a per-sport basis while authorizing the FHSAA to allow a public school the option to apply for consideration to join another athletic association on a per-sport basis.

CS by Education Pre-K – 12 on January 14, 2016
The committee substitute revises the current process and standards for FHSAA determinations of eligibility and specifies for an informal and formal appealing process for resolving student eligibility disputes.

B. Amendments:

None.

By the Committee on Education Pre-K - 12; and Senator Simmons

581-02156-16 20161026c1

A bill to be entitled

An act relating to high school athletics; amending s. 1006.20, F.S.; providing requirements regarding fees and contest receipts collected by the Florida High School Athletic Association (FHSAA); requiring the FHSAA to allow a school to join the FHSAA as a full-time member or on a per-sport basis; prohibiting the FHSAA from taking any retributory or discriminatory action against specified schools; authorizing the Commissioner of Education to identify other associations in compliance with specified provisions; providing a process for resolving student eligibility disputes; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (1) and present paragraph (h) of subsection (2) of section 1006.20, Florida Statutes, are amended, present paragraphs (g) through (m) of that subsection are redesignated as paragraphs (h) through (n), respectively, and a new paragraph (g) is added to that subsection, to read:

1006.20 Athletics in public K-12 schools.—

(1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High School Athletic Association (FHSAA) is designated as the governing nonprofit organization of athletics in Florida public schools. If the FHSAA fails to meet the provisions of this section, the commissioner shall designate a nonprofit organization to govern athletics with the approval of the State Board of Education. The FHSAA is not a state agency as defined in s. 120.52 but is~~. The FHSAA shall be~~ subject to ss. 1006.15-1006.19. Any special event fees; sanctioning fees, including

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third-party sanctioning fees; or contest receipts collected annually by the FHSAA may not exceed its actual costs to perform the function or duty that is the subject of or justification for the fee ~~the provisions of s. 1006.19~~. ~~A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.~~ Any high school in the state, including private schools, traditional public schools, charter schools, virtual schools, and home education cooperatives, may become a member of the FHSAA and participate in the activities of the FHSAA. ~~However,~~ Membership in the FHSAA is not mandatory for any school. The FHSAA shall allow a school the option of joining the association as a full-time member or on a per-sport basis and may not prohibit or discourage any school from simultaneously maintaining membership in the FHSAA and another athletic association. The FHSAA may not deny or discourage interscholastic competition between its member schools and nonmember ~~non-FHSAA member Florida~~ schools, including members of another athletic association ~~governing organization~~, and may not take any retributory or discriminatory action against any of its member schools that seek to participate in interscholastic competition with nonmember ~~non-FHSAA member Florida~~ schools or any of its member schools that seek membership in other associations for a sport for which they are not a member of the FHSAA. The FHSAA may not unreasonably withhold its approval of an application to become an affiliate member of the National Federation of State High School Associations submitted by any other association ~~organization~~ that governs interscholastic athletic competition in this state which meets the requirements of this section. The commissioner

may identify other associations that govern interscholastic athletic competition in compliance with this section ~~The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them, are governed, unless otherwise specifically provided by statute~~. For the purposes of this section, "high school" includes grades 6 through 12.

(2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

(g) The FHSAA shall provide a process for the resolution of student eligibility disputes which includes the opportunity to use an informal conference procedure.

1. The FHSAA must provide written notice to the student athlete, parent, and member school stating specific findings of fact that support a determination of ineligibility. The student athlete, parent, or member school must request an informal conference within 10 days after receipt of such notice if intending to contest the determination. The informal conference must be held within 10 days after receipt of the request. The informal conference may be held by telephone or by video conference and, if video conference equipment is available, may be conducted at the student's school.

2. If the eligibility dispute is not resolved at the informal conference and if requested by the student athlete, parent, or member school, the FHSAA must provide a formal process for the timely and cost-effective resolution of an eligibility dispute by a neutral third party whose decision is binding on the parties to the dispute. The neutral third party must be mutually agreed to by the parties and may be a retired or former judge, a dispute resolution professional approved by

The Florida Bar or by the court in the circuit in which the dispute arose, or a certified mediator or arbitrator in the jurisdiction in which the dispute arose. If the parties cannot mutually agree on a neutral third party, the FHSAA must select a neutral third party at random from a list of dispute resolution professionals maintained by The Florida Bar.

3. A final determination regarding the eligibility dispute must be issued no later than 30 days after the informal conference, unless an extension is agreed upon by both parties.

(i) ~~(h)~~ In lieu of bylaws adopted under paragraph (h) ~~(g)~~, the FHSAA may adopt bylaws providing as a minimum the procedural safeguards of ss. 120.569 and 120.57, making appropriate provision for appointment of unbiased and qualified hearing officers.

Section 2. This act shall take effect July 1, 2016.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 12, 2016

I respectfully request that **Senate Bill 1026**, relating to High School Athletics, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/16
Meeting Date

SB 1026
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ron Book

Job Title _____

Address 104 W. Jefferson
Street

TLH 32301
City *State* *Zip*

Phone 850-224-3427

Email RonB@RLBookPA.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FASAA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-16
Meeting Date

1026
Bill Number (if applicable)

Topic High School Athletics

Amendment Barcode (if applicable)

Name Natalie King

Job Title VP

Address 235 W Brandon Blvd 640
Street

Phone 813 924 8218

Brandon FL 33511
City *State* *Zip*

Email Natalie@rsaconsulting.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Sunshine State Athletics Conference

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	CS/CS/SB 1118
INTRODUCER:	Judiciary Committee; Banking and Insurance Committee; and Senator Simmons
SUBJECT:	Transportation Network Company Insurance
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Betta	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1118 specifies minimum insurance requirements for ridesharing companies, also known as transportation network companies (TNCs), such as Uber, Lyft, and SideCar. Transportation network companies use smartphone technology to connect individuals who want to purchase rides with private drivers. Most personal automobile insurance policies do not provide coverage when a vehicle is being used to transport passengers for a fee.

When a driver is logged on a TNC's digital network or engaged in a prearranged ride, the following minimum insurance requirements apply:

- $125,000 for death and bodily injury per person;
- $250,000 for death and bodily injury per incident; and
- $50,000 for property damage.

When a TNC driver is not logged on the TNC's digital network or engaged in a prearranged ride, the following minimum insurance requirements apply:

- $25,000 for death and bodily injury per person;
- $50,000 for death and bodily injury per incident; and
- $10,000 for property damage.

The bill also requires TNCs or TNC drivers to maintain personal injury protection insurance under the Florida Motor Vehicle No-Fault Law.

In addition to the insurance coverage requirements, the TNC must electronically notify TNC drivers:

- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network; and
- If a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy.

The bill preempts local ordinances imposing insurance requirements on transportation network companies.

There is no fiscal impact to state funds.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. This new technology has led to the creation of ridesharing companies, such as Uber, Lyft, and SideCar. These companies describe themselves as "transportation network companies" (TNCs), rather than as vehicles for hire, such as taxi or limousine companies.

Some state and local governments have taken steps to recognize and regulate companies using these new technologies. At least 29 states have enacted legislation regarding transportation network companies.[1]

Transportation Network Companies

Ridesharing companies, or transportation network companies, use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and proceeds to pick up the passenger. Once at the destination, payment is made through the phone application.

TNC drivers generally use their personal vehicles to transport passengers. Most personal automobile policies contain a "livery" exclusion that excludes coverage if the vehicle is carrying passengers for hire.[2] Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is operating the vehicle. For example, Uber advertises coverage in the amounts of $1 million of liability per incident, $1 million of uninsured/underinsured motorist coverage per incident, and comprehensive and collision insurance if the driver holds personal comprehensive and collision coverage on the

[1] *See* PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA, PCI APPLAUDS INNOVATION AND COMMON SENSE APPROACH TO FIXING TRANSPORTATION NETWORK COMPANY INSURANCE GAPS: 29 STATES HAVE ENACTED RIDE HAILING LEGISLATION, http://www.pciaa.net/industry-issues/transportation-network-companies (last visited Jan. 12, 2016).

[2] The "livery" exclusion in Florida is mentioned in the definition of "motor vehicle insurance," contained in s. 627.041, F.S.

vehicle. Uber advertises that its insurance policy applies from the moment a driver accepts a trip to its conclusion.[3]

Coverage provided by ridesharing companies, however, is often secondary to a driver's personal insurance policy. Secondary coverage means that the ridesharing company policy provides coverage when the personal policy does not. This can lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage.

In 2015, stakeholders agreed to create model legislation on regulations for TNCs.[4] The model legislation is known as the TNC Insurance Compromise Model Bill. The model bill establishes parameters for insurance coverage for TNCs. Coverage varies under the bill, but during the time in which a driver has accepted a ride request and is transporting a passenger, the bill requires $1 million in liability coverage for death, bodily injury, and property damage.[5] Premiums may be paid by the TNC driver, the TNC, or a combination of both. The bill identifies and defines various terms relevant to these transactions, including the terms "personal vehicle," "digital network," "transportation network company," "driver," and "prearranged ride."[6]

Insurance Amounts Required for Taxis, Limousines and other For-hire Transportation Services

Taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, up to $250,000 per incident for bodily injury, and $50,000 for property damage.[7]

Local Ordinances

In 2015, several counties in Florida adopted ordinances regulating transportation network companies (TNCs). Broward adopted an ordinance requiring TNCs and drivers to undergo vehicle inspections, background checks including fingerprinting, purchase of a chauffeur's license, and purchase of 24/7 insurance.[8] Lee County adopted an ordinance that subjects TNCs to the same requirements as those imposed on taxi and limousine services. The ordinance requires drivers to undergo background checks and requires vehicle registration and the purchase of specified insurance.[9] Palm Beach County adopted an ordinance subjecting TNCs and drivers to

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[3] *See* UBER, INSURANCE FOR UBERX WITH RIDESHARING (Feb. 10, 2014) http://blog.uber.com/ridesharinginsurance.
[4] Stakeholders in agreement include the companies of Allstate, American Insurance Association, Lyft, State Farm, and Uber Technologies. UBER, INSURANCE ALIGNED (Mar. 24, 2015), https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/.
[5] *See* NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, SUPPLEMENTAL HANDOUT: TNC INSURANCE COMPROMISE MODEL BILL UPDATED MARCH 26, http://www.naic.org/meetings1503/committees_c_sharing_econ_wg_2015_spring_nm_additional_materials.pdf
[6] *See* UBER, INSURANCE ALIGNED (Mar. 24, 2015), https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/.
[7] *See* s. 324.032(1), F.S.
[8] *See Broward County Passes Uber, Lyft Ordinance*, NBC 6 SOUTH FLORIDA, Apr. 28, 2015, http://www.nbcmiami.com/news/local/Broward-County-to-Vote-on-Uber-Lyft-Ordinance-301529861.html.
[9] *See* Heather Wysocki, *Lee County Oks regulation for Uber, Lyft services*, NEWS-PRESS.COM, Mar. 17, 2015, http://www.news-press.com/story/money/2015/03/17/lee-county-oks-regulation-for-uber-lyft-services/24901931/ .

background check and insurance requirements.[10] The ordinance adopted by the city of Sarasota treats TNCs as taxi companies. In so doing, drivers are subject to insurance, background checks, and a $35 license fee. The ordinance additionally requires vehicle inspections and prohibits the use of vehicles over ten years old.[11]

III. Effect of Proposed Changes:

Insurance Requirements

The bill provides uniform statewide minimum insurance requirements for Transportation Network Companies (TNCs) and TNC drivers. The bill applies the framework of the TNC Insurance Compromise Model Bill, and imposes insurance requirements similar to those required of companies providing taxi services.

The bill replicates many of the same definitions and parameters established in the Model Bill. For example, a TNC is defined as an entity that uses a digital network[12] to connect TNC riders[13] with TNC drivers[14] who provide prearranged rides. A prearranged ride:

- Begins when the driver accepts a request for a ride by a rider through a digital network controlled by a TNC;
- Continues while the driver transports the rider; and
- Ends when the last rider departs from the vehicle.

A prearranged ride does not include a ride from a taxi, jitney, limousine, or other for-hire vehicles that transport people or goods for compensation.

The term "transportation network company" does not include entities arranging nonemergency medical transportation for individuals qualifying for Medicare or Medicaid pursuant to a contract with a state or managed care organization.

Insurance coverage can be maintained by the TNC, the TNC driver, or a combination of both. Coverage maintained by the TNC must obligate the TNC to defend the claim. The coverage may

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[10] *See* Jenn Strathman, *Uber allowed to operate in Palm Beach County with some regulations: Drivers must have background checks and Insurance*, WPTV 5 WEST PALM BEACH, updated Mar. 10, 2015, http://www.wptv.com/money/consumer/uber-allowed-to-operate-in-palm-beach-county-with-some-regulations .

[11] *See* Emily Le Coz, *Sarasota poised to regulate Uber*, HERALD-TRIBUNE, last modified Sept. 3, 2015, http://www.heraldtribune.com/article/20150903/ARTICLE/150909881; Aaron Eggleston, *Sarasota Uber drivers face tougher regulations*, WWSB 7 MYSUNCOAST, July 6. 2015, http://www.mysuncoast.com/news/local/sarasota-uber-drivers-face-tougher-regulations/article_2ae27ee0-245b-11e5-a38f-a7017122a16e.html .

[12] The bill defines a "digital network" as an online application, software, website, or system offered by or used by a TNC which enables rides with TNC drivers.

[13] The bill defines a TNC "rider" as an individual who directly or indirectly uses a TNC's digital network to connect with a TNC driver who provides transportation services in the TNC driver's personal vehicle. The bill defines personal vehicle as a vehicle used by the TNC driver in connection with providing TNC services and which is owned, leased, or otherwise authorized for use by the TNC driver. The bill provides that a vehicle that is let or rented to another for consideration may be used as a personal vehicle.

[14] The bill defines a TNC "driver" as an individual who receives connections to potential riders and related services from a TNC in exchange for any form of compensation to the TNC and uses a personal vehicle to offer or provide a prearranged ride upon connection through a digital network controlled by a TNC in return for compensation.

not be contingent on the denial of the claim by the TNC driver's personal policy. In other words, the insurance must be primary.

The bill identifies two time periods during which insurance is required. The first time period is during the time when a driver is logged on to the transportation network company's digital network or providing a prearranged ride. The second time period applies at all times other than when a driver is logged on to the TNC network or providing a prearranged ride.

During the first time period, the bill requires transportation network companies or drivers to maintain a minimum of primary automobile liability insurance in the same amounts as is required of taxi and limousine companies. These limits are:

- $125,000 for death and bodily injury per person;
- $250,000 for death and bodily injury per incident; and
- $50,000 for property damage.

During the second time period, the following insurance requirements apply and are the responsibility of the driver:

- $25,000 for death and bodily injury per person;
- $50,000 for death and bodily injury per incident; and
- $10,000 for property damage.

The bill also requires a company or a driver to maintain personal injury protection under the Florida Motor Vehicle No-Fault Law.[15]

If a driver carries insurance as required by this bill, the driver is deemed to comply with other statutory insurance requirements.

Responsibilities of the TNC and the TNC Driver

The bill requires a TNC to disclose in writing the following to a TNC driver:

- The type and limits of insurance coverage provided by the TNC;
- The type of automobile insurance coverage that the driver must maintain while the driver uses a personal vehicle in connection with the TNC; and
- The fact that if a driver provides rides for compensation not covered by the bill the driver must maintain the same coverage limits required of other for-hire passenger transportation vehicles such as taxicabs, jitneys, and limousines[16] and is subject to criminal penalties for failing to comply.[17]

The TNC must also provide, through electronic notice, a statement to TNC drivers:

- That if a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy; and

[15] Section 627.736(1), F.S., requires personal injury protection of $10,000 in medical and disability benefits and $5,000 in death benefits.
[16] Section 324.032(1), F.S., requires minimum coverage of $125,000/250,000/50,000.
[17] A driver who fails to comply with the insurance requirements commits a second-degree misdemeanor, punishable by up to 60 days in jail and up to a $500 fine. Sections 324.221(1) and (2), 775.082(4)(b), and 775.083(1)(e), F.S.

- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network.

Although the required notice states that rides not arranged through a TNC's digital network are illegal, the bill does not specify a penalty for the illegal conduct.

The bill requires the TNC driver to carry proof of insurance required under the bill at all times during the TNC driver's use of a personal vehicle. In the event of an accident, the bill requires the TNC driver to:

- Provide the insurance coverage information to the directly involved parties, automobile insurers, and investigating law enforcement officers. Proof of financial responsibility may be provided through a digital telephone application controlled by a TNC.
- Disclose, upon request, to the directly involved parties, automobile insurers, and investigating law enforcement officers whether the TNC driver was logged on to the TNC digital network or engaged in a prearranged ride at the time of the accident.

Insurer Exclusions

The bill authorizes an insurer that provides personal automobile insurance policies to exclude from coverage any loss or injury that occurs while a TNC driver is logged onto the TNC's digital network or while a driver is engaged in a prearranged ride. The right to exclude coverage includes:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage; and
- Collision damage coverage.

If an insurer excludes such coverages, the insurer does not have the duty to defend or indemnify the excluded claim. The bill does not invalidate or limit exclusions contained in policies in use or approved before July 1, 2017. The insurer has a right of contribution against other insurers that provide automobile insurance to the same driver if the insurer defends or indemnifies a claim which is excluded under the terms of its policy.

The bill does not require a personal automobile insurance policy to provide coverage while the driver is logged into the TNC digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. The bill allows an insurer to provide coverage by contract or endorsement when a personal vehicle is used for such purposes.

Claims Investigations

The bill requires a TNC and any insurer potentially providing coverage for a claim to cooperate to facilitate the exchange of information. The information must provide the precise times that a driver logged on and off the TNC's digital network during the 12 hour periods immediately before and after the accident and provide a clear description of automobile insurance maintained.

A driver who provides a false statement to a law enforcement officer in connection with an accident that may involve a TNC driver commits a second-degree misdemeanor.

Preemption

The bill provides that TNC insurance requirements are governed exclusively by the provisions of the bill and any rules adopted by the Financial Services Commission. A political subdivision may not adopt ordinances imposing insurance requirements on TNCs or TNC drivers. Any existing ordinances are preempted.

Other Provisions

Section 316.066, F.S., requires law enforcement officers to submit crash reports to the Department of Highway Safety and Motor Vehicles after an accident. The reports must include information relating to drivers, passengers, witnesses, and insurance. This bill amends s. 316.066, F.S., to require crash reports submitted to the Department of Highway Safety and Motor Vehicles by law enforcement officers to include a statement as to whether any driver was provided a prearranged ride or logged into a TNC's digital network at the time of the accident. A driver that provides a false statement in connection with such information commits a second degree misdemeanor.

The insurance required under this bill must be provided by an insurer authorized to do business in Florida which is a member of the Florida Insurance Guaranty Association or by an eligible surplus lines insurer that has a "superior," "excellent," "exceptional," or equivalent rating by a rating agency acceptable to the Office of Insurance Regulation.

If the TNC's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the TNC's insurer must issue payment directly to the entity repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

The bill provides that a TNC is not deemed to control, direct, or manage the personal vehicles or TNC drivers who connect to the TNC's digital network. This declaration may minimize a TNC's exposure to lawsuits based on the negligence of its drivers.

The bill provides that the Financial Services Commission may adopt rules to administer the provisions of the bill.

This bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill preempts and supersedes local ordinances, but the bill does not appear to impose a mandate on a city or county.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/CS/SB 1118 preempts local ordinances that address transportation network companies (TNC). Some local governments have instituted fees that the preemption would negate.

B. Private Sector Impact:

The bill imposes insurance requirements on TNCs which do not currently exist in law. The cost of complying with insurance requirements is not known. If the cost of insurance mandated by the bill is significant, the bill may have a negative effect on the businesses that are unable to absorb the costs or pass the costs on to their customers.

C. Government Sector Impact:

The preemption clause provides that TNC insurance requirements are governed exclusively by the bill and any rules adopted by the Financial Services Commission. Although rules may need to be adopted, the Department of Financial Services and the Office of Insurance Regulation do not expect a fiscal impact from the provisions of the bill.[18]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 316.066 of the Florida Statutes.

This bill creates section 627.748 of the Florida Statutes.

[18] Department of Financial Services, *Fiscal Impact Statement* (Jan. 11, 2016); Office of Insurance Regulation, *2016 Legislative Bill Analysis* (Jan. 15, 2016).

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on February 9, 2016:
The CS requires the TNC to provide, through electronic notice, a statement to TNC drivers:

- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network; and
- That if a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy.

CS by Banking and Insurance on January 19, 2016:
The CS changes the required insurance requirements to $125,000 for death and bodily injury per person, $250,000 for death and bodily injury per incident, $50,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law for time periods in which the driver is logged on to the TNC's digital network and for time periods in which the driver is providing a prearranged ride. At all other times, the coverage requirements are $25,000 for death and bodily injury per person, $50,000 for death and bodily injury per incident, $10,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law.

The CS provides that information about whether a driver is logged on a digital network must be included in crash reports submitted to the Department of Highway Safety and Motor Vehicles by law enforcement officers.

The CS removed a reference to A.M. Best Company and gave the Office of Insurance Regulation the discretion to rely on other rating agencies to determine financial strength ratings of surplus lines insurers.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 162 - 316

and insert:

maintain primary motor vehicle insurance that recognizes that the driver is a transportation network company driver or that the driver otherwise uses a personal vehicle to transport riders for compensation. Such primary motor vehicle insurance must cover the driver as required under this section, including while the driver is logged on to the transportation network company's


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digital network but is not engaged in a prearranged ride, and while the driver is engaged in a prearranged ride.

(b) The following motor vehicle insurance coverage requirements apply while a transportation network company driver is logged on to the transportation network company's digital network but is not engaged in a prearranged ride:

1. Primary motor vehicle liability insurance coverage of at least $125,000 for death and bodily injury per person, $250,000 for death and bodily injury per incident, and $50,000 for property damage; and

2. Primary motor vehicle insurance coverage that meets the minimum requirements under ss. 627.730-627.7405.

(c) The following motor vehicle insurance coverage requirements apply while a transportation network company driver is engaged in a prearranged ride:

1. Primary motor vehicle liability insurance coverage of at least $1 million for death and bodily injury per person, $1 million for death and bodily injury per incident, and $50,000 for property damage; and

2. Primary motor vehicle insurance coverage that meets the minimum requirements under ss. 627.730-627.7405.

(d) At all times other than the periods specified in paragraphs (b) and (c), the following motor vehicle insurance requirements apply if a driver has an agreement with a transportation network company to provide any form of transportation service to riders:

1. Primary motor vehicle liability insurance coverage of at least $25,000 for death and bodily injury per person, $50,000 for death and bodily injury per incident, and $10,000 for

property damage; and

2. Primary motor vehicle insurance that provides the minimum requirements under ss. 627.730-627.7405.

(e) The coverage requirements of paragraphs (b), (c), and (d) may be satisfied by insurance maintained by the transportation network company driver, by the transportation network company, or by a combination of both.

(f) If the insurance maintained by a driver under paragraph (b) or paragraph (c) lapses or does not provide the required coverage, the transportation network company must maintain insurance that provides the coverage required by this section beginning with the first dollar of a claim and must obligate the insurer to defend such a claim in this state.

(g) Coverage under a motor vehicle insurance policy maintained by the transportation network company may not be contingent on a denial of a claim under the driver's personal motor vehicle liability insurance policy, nor shall a personal motor vehicle insurer be required to first deny a claim.

(h) Insurance required by this section must be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, an excellent, an exceptional, or an equivalent financial strength rating by a rating agency acceptable to the office.

(i) Insurance that satisfies the requirements of this section is deemed to satisfy the financial responsibility requirements imposed under chapter 324 and the security requirements imposed under s. 627.733. However, the provision of transportation to persons for compensation which is not covered


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under this section subjects a vehicle and driver to the requirements of chapters 320 and 324.

(j) A transportation network company driver shall carry proof of insurance coverage that meets the requirements of paragraphs (b), (c), and (d) at all times during his or her use of a personal vehicle. In the event of an accident:

1. The driver shall provide the insurance coverage information to the directly involved parties, insurers, and investigating law enforcement officers. Proof of financial responsibility may be provided through a digital telephone application under s. 316.646 which is controlled by a transportation network company.

2. Upon request, the driver shall disclose to the directly involved parties, insurers, and investigating law enforcement officers whether the driver, at the time of the accident, was logged on to the transportation network company's digital network or engaged in a prearranged ride.

(k) Before a driver may accept a request for a prearranged ride on the transportation network company's digital network, the transportation network company shall disclose in writing to each transportation network company driver:

1. The type and limits of insurance coverage provided by the transportation network company;

2. The type of insurance coverage that the driver must maintain while the driver uses a personal vehicle in connection with the transportation network company; and

3. That the provision of rides for compensation, whether prearranged or otherwise, which is not covered by this section subjects the driver to the coverage requirements imposed by s.


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324.032(1) and that failure to meet such limits subjects the driver to penalties provided in s. 324.221, up to and including a misdemeanor of the second degree.

(l) A transportation network company must provide an electronic notice to transportation network company drivers that:

1. It may be illegal for a transportation network company driver to solicit or accept a prearranged ride if the ride is not arranged through a transportation network company's digital network or online-enabled application; and

2. Such rides may not be covered by a transportation network company's insurance policy.

(m) An insurer that provides personal motor vehicle insurance policies under this part may exclude from coverage under a policy issued to an owner or operator of a personal vehicle any loss or injury that occurs while a driver is logged on to a transportation network company's digital network or while a driver is engaged in a prearranged ride. Such right to exclude coverage applies to any coverage under a motor vehicle insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage.

2. Personal injury protection coverage.

3. Uninsured and underinsured motorist coverage.

4. Medical payments coverage.

5. Comprehensive physical damage coverage.

6. Collision physical damage coverage.

Such exclusion is limited only to the owner or operator of the

vehicle that is being driven by the owner or operator while logged on to a transportation network company's digital network or engaged in a prearranged ride.

(n) The exclusions authorized under paragraph (m) apply notwithstanding any financial responsibility requirements under chapter 324. This section does not require that a personal motor vehicle insurance policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. However, an insurer may elect to provide coverage by contract or endorsement for such driver's personal vehicle used for such purposes.

(o) An insurer that excludes coverage as authorized under paragraph (m):

1. Does not have a duty to defend or indemnify an excluded claim. This section does not invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use in this state before July 1, 2017.

2. Has a right of contribution against other insurers that provide motor vehicle insurance to the same driver in satisfaction of the coverage requirements of this section at the time of loss, if the insurer defends or indemnifies a claim against a driver which is excluded under the terms of its policy.

(p) In a claims investigation, a transportation network company and any insurer providing coverage for a claim under this section shall cooperate to facilitate the exchange of relevant information with directly involved parties and insurers


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of the transportation network company driver, if applicable. Such information must provide:

1. The precise times that a driver logged on and off the transportation network company's digital network during the 12-hour period immediately before and immediately after the accident.

2. A clear description of the coverage, any exclusions, and the limits provided under insurance maintained under this section.

(q) If a transportation network company's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the transportation network company shall cause its insurer to issue the payment directly to the entity repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

(4) Unless agreed to in a written contract, a transportation network company is not deemed to control, direct, or manage the personal vehicles that, or the transportation network company drivers who, connect to its digital network.

(5) The Financial Services Commission may adopt rules to

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 14 - 45

and insert:

or a combination of both, to maintain certain primary motor vehicle insurance under certain circumstances; providing coverage requirements under specified circumstances; requiring a transportation network

company to maintain certain insurance and obligate the insurer to defend a certain claim if specified insurance of the driver lapses or does not provide the required coverage; providing that certain coverage may not be contingent on a claim denial; specifying requirements for insurers that provide the required insurance; providing for construction; requiring a transportation network company driver to carry proof of certain insurance coverage at all times during his or her use of a personal vehicle and to disclose specified information in the event of an accident; requiring a transportation network company to make certain disclosures and provide a specified notice to transportation network company drivers; authorizing an insurer to exclude certain coverage for loss or injury to specified persons which occurs under certain circumstances; providing for applicability and construction; requiring a transportation network company and certain insurers to cooperate during a claims investigation to facilitate the exchange of specified information; requiring a transportation network company to cause its insurer to issue payments for claims directly to specified entities under certain circumstances; providing that, unless agreed to in a written contract, a transportation network company is not deemed to control, direct, or manage the personal vehicles or transportation network company drivers that connect to its digital network;

By the Committees on Judiciary; and Banking and Insurance; and Senator Simmons

590-03304A-16 20161118c2

A bill to be entitled

An act relating to transportation network company insurance; amending s. 316.066, F.S.; requiring a statement in certain crash reports as to whether any driver at the time of the accident was providing a prearranged ride or logged into a digital network of a transportation network company; providing a criminal penalty for a driver who provides a false statement to a law enforcement officer in connection with certain information; creating s. 627.748, F.S.; providing legislative intent; defining terms; requiring a transportation network company driver, or the transportation network company on the driver's behalf, to maintain certain primary automobile insurance under certain circumstances; providing coverage requirements under specified circumstances; requiring a transportation network company to maintain certain insurance and obligate the insurer to defend a certain claim if specified insurance by the driver lapses or does not provide the required coverage; providing that certain coverage may not be contingent on a claim denial; specifying requirements for insurers who provide certain automobile insurance; requiring a transportation network company driver to carry proof of certain insurance coverage at all times during his or her use of a personal vehicle and to disclose specified information in the event of an accident; requiring a transportation network company to make certain disclosures to transportation network company drivers; authorizing insurers to exclude certain coverages during specified periods for policies issued

590-03304A-16 20161118c2

to transportation network company drivers for personal vehicles; requiring a transportation network company and certain insurers to cooperate during a claims investigation to facilitate the exchange of specified information; requiring a transportation network company to cause its insurer to issue payments for claims directly to specified entities under certain circumstances; providing that unless agreed to in a written contract, a transportation network company is not deemed to control, direct, or manage the personal vehicles or transportation network company drivers that connect to its digital network; requiring a transportation network company to provide a specified notice to transportation network company drivers; authorizing the Financial Services Commission to adopt rules; providing for preemption of local laws and regulations pertaining to transportation network company insurance; providing an effective date.

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

Section 1. Paragraphs (b) and (c) of subsection (1) of section 316.066, Florida Statutes, are amended, and paragraph (e) is added to subsection (3) of that section, to read:

316.066 Written reports of crashes.—

(1)

(b) The Florida Traffic Crash Report, Long Form must include:

1. The date, time, and location of the crash.

2. A description of the vehicles involved.

3. The names and addresses of the parties involved, including all drivers and passengers, and the identification of the vehicle in which each was a driver or a passenger.

4. The names and addresses of witnesses.

5. The name, badge number, and law enforcement agency of the officer investigating the crash.

6. The names of the insurance companies for the respective parties involved in the crash.

7. A statement as to whether, at the time of the accident, any driver was providing a prearranged ride or logged into a digital network of a transportation network company, as those terms are defined in s. 627.748.

(c) In any crash for which a Florida Traffic Crash Report, Long Form is not required by this section and which occurs on the public roadways of this state, the law enforcement officer shall complete a short-form crash report or provide a driver exchange-of-information form, to be completed by all drivers and passengers involved in the crash, which requires the identification of each vehicle that the drivers and passengers were in. The short-form report must include:

1. The date, time, and location of the crash.

2. A description of the vehicles involved.

3. The names and addresses of the parties involved, including all drivers and passengers, and the identification of the vehicle in which each was a driver or a passenger.

4. The names and addresses of witnesses.

5. The name, badge number, and law enforcement agency of the officer investigating the crash.

6. The names of the insurance companies for the respective parties involved in the crash.

7. A statement as to whether, at the time of the accident, any driver was providing a prearranged ride or logged into a digital network of a transportation network company, as those terms are defined in s. 627.748.

(3)

(e) Any driver who provides a false statement to a law enforcement officer in connection with the information that is required to be reported under subparagraph (1)(b)7. or subparagraph (1)(c)7. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Section 627.748, Florida Statutes, is created to read:

627.748 Transportation network company insurance.—

(1) It is the intent of the Legislature to provide for statewide uniformity of laws governing the insurance requirements imposed on transportation network companies and transportation network company drivers.

(2) For purposes of this section, the term:

(a) "Digital network" means an online application, software, website, or system offered or used by a transportation network company which enables the prearrangement of rides with transportation network company drivers.

(b) "Personal vehicle" means a vehicle, however titled, which is used by a transportation network company driver in connection with providing transportation network company service and which:

1. Is owned, leased, or otherwise authorized for use by the

transportation network company driver; and

2. Is not a taxi, jitney, limousine, or for-hire vehicle as that term is defined in s. 320.01(15).

Notwithstanding any other law, a vehicle that is let or rented to another for consideration may be used as a personal vehicle.

(c) "Prearranged ride" means the provision of transportation by a driver to or on behalf of a rider, beginning when a driver accepts a request for a ride by a rider through a digital network controlled by a transportation network company, continuing while the driver transports the rider, and ending when the last rider departs from the personal vehicle. A prearranged ride does not include transportation provided using a taxi, jitney, limousine, for-hire vehicle as defined in s. 320.01(15), or street hail service.

(d) "Transportation network company" or "company" means a corporation, partnership, sole proprietorship, or other entity operating in this state which uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company does not include an individual, corporation, partnership, sole proprietorship, or other entity arranging nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

(e) "Transportation network company driver" or "driver" means an individual who:

1. Receives connections to potential riders and related services from a transportation network company in exchange for

any form of compensation, including payment of a fee to the transportation network company; and

2. Uses a personal vehicle to offer or provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network company in return for compensation, including payment of a fee.

(f) "Transportation network company rider" or "rider" means an individual who directly or indirectly uses a transportation network company's digital network to connect with a transportation network company driver who provides transportation services to the individual in the driver's personal vehicle.

(3)(a) A transportation network company driver, or a transportation network company on the driver's behalf, shall maintain primary automobile insurance that recognizes that the driver is a transportation network company driver or that the driver otherwise uses a personal vehicle to transport riders for compensation. Such primary automobile insurance must cover the driver as required under this section, including while the driver is logged on to the transportation network company's digital network but is not engaged in a prearranged ride, and while the driver is engaged in a prearranged ride.

(b) The following automobile insurance coverage requirements apply while a transportation network company driver is logged on to the transportation network company's digital network but is not engaged in a prearranged ride, and while the driver is engaged in a prearranged ride:

1. Primary automobile liability insurance coverage of at least $125,000 for death and bodily injury per person, $250,000

for death and bodily injury per incident, and $50,000 for property damage; and

2. Primary automobile insurance coverage that meets the minimum requirements under ss. 627.730-627.7405.

(c) At all times other than the periods specified in paragraph (b), the following automobile insurance requirements apply if a driver has an agreement with a transportation network company to provide any form of transportation service to riders:

1. Primary automobile liability insurance coverage of at least $25,000 for death and bodily injury per person, $50,000 for death and bodily injury per incident, and $10,000 for property damage; and

2. Primary automobile insurance that provides the minimum requirements under ss. 627.730-627.7405.

(d) The coverage requirements of paragraphs (b) and (c) may be satisfied by automobile insurance maintained by the transportation network company driver, by the transportation network company, or by a combination of both.

(e) If the insurance maintained by a driver under paragraph (b) lapses or does not provide the required coverage, the transportation network company must maintain insurance that provides the coverage required by this section beginning with the first dollar of a claim and must obligate the insurer to defend such a claim in this state.

(f) Coverage under an automobile insurance policy maintained by the transportation network company may not be contingent on a denial of a claim under the driver's personal automobile liability insurance policy, nor shall a personal automobile insurer be required to first deny a claim.

(g) Automobile insurance required by this section must be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, an excellent, an exceptional, or an equivalent financial strength rating by a rating agency acceptable to the office.

(h) Automobile insurance that satisfies the requirements of this section is deemed to satisfy the financial responsibility requirements imposed under chapter 324 and the security requirements imposed under s. 627.733. However, the provision of transportation to persons for compensation that is not covered under this section subjects a vehicle and driver to the requirements of chapters 320 and 324.

(i) A transportation network company driver shall carry proof of insurance coverage that meets the requirements of paragraphs (b) and (c) at all times during his or her use of a personal vehicle. In the event of an accident:

1. The driver shall provide the insurance coverage information to the directly involved parties, automobile insurers, and investigating law enforcement officers. Proof of financial responsibility may be provided through a digital telephone application under s. 316.646 which is controlled by a transportation network company.

2. Upon request, the driver shall disclose to the directly involved parties, automobile insurers, and investigating law enforcement officers whether the driver, at the time of the accident, was logged on to the transportation network company's digital network or engaged in a prearranged ride.

(j) Before a driver may accept a request for a prearranged

ride on the transportation network company's digital network, the transportation network company shall disclose in writing to each transportation network company driver:

1. The type and limits of insurance coverage provided by the transportation network company;

2. The type of automobile insurance coverage that the driver must maintain while the driver uses a personal vehicle in connection with the transportation network company; and

3. That the provision of rides for compensation, whether prearranged or otherwise, which is not covered by this section subjects the driver to the coverage requirements imposed by s. 324.032(1) and that failure to meet such limits subjects the driver to penalties provided in s. 324.221, up to and including a misdemeanor of the second degree.

(k) An insurer that provides personal automobile insurance policies under this part may exclude from coverage under a policy issued to an owner or operator of a personal vehicle any loss or injury that occurs while a driver is logged on to a transportation network company's digital network or while a driver is engaged in a prearranged ride. Such right to exclude coverage applies to any coverage under an automobile insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage.

2. Personal injury protection coverage.

3. Uninsured and underinsured motorist coverage.

4. Medical payments coverage.

5. Comprehensive physical damage coverage.

6. Collision physical damage coverage.

(l) The exclusions authorized under paragraph (k) apply notwithstanding any financial responsibility requirements under chapter 324. This section does not require that a personal automobile insurance policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. However, an insurer may elect to provide coverage by contract or endorsement for such driver's personal vehicle used for such purposes.

(m) An insurer that excludes coverage as authorized under paragraph (k):

1. Does not have a duty to defend or indemnify an excluded claim. This section does not invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use in this state before July 1, 2017.

2. Has a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of this section at the time of loss, if the insurer defends or indemnifies a claim against a driver which is excluded under the terms of its policy.

(n) In a claims investigation, a transportation network company and any insurer providing coverage for a claim under this section shall cooperate to facilitate the exchange of relevant information with directly involved parties and insurers of the transportation network company driver, if applicable. Such information must provide:

1. The precise times that a driver logged on and off the transportation network company's digital network during the 12-

hour period immediately before and immediately after the accident.

2. A clear description of the coverage, any exclusions, and the limits provided under automobile insurance maintained under this section.

(o) If a transportation network company's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the transportation network company shall cause its insurer to issue the payment directly to the entity repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

(4) Unless agreed to in a written contract, a transportation network company is not deemed to control, direct, or manage the personal vehicles that, or the transportation network company drivers who, connect to its digital network.

(5) A transportation network company shall provide an electronic notice to transportation network company drivers which states that it is illegal for a transportation network company driver to solicit or accept a ride if the ride is not arranged through a transportation network company's digital network, and that such rides may not be covered by a transportation network company driver's or a transportation network company's insurance policy.

(6) The Financial Services Commission may adopt rules to administer this section.

Section 3. PREEMPTION.—Notwithstanding any other law, transportation network company insurance requirements are governed exclusively by this section and any rules adopted by the Financial Services Commission to administer this section. A

political subdivision of this state may not adopt any ordinance imposing insurance requirements on a transportation network company or driver. All such ordinances, whether existing or proposed, are preempted and superseded by general law.

Section 4. This act shall take effect January 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Tom Lee, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 9, 2016

I respectfully request that **Senate Bill 1118**, relating to Transportation Network Company Insurance, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/13/16
Meeting Date

1118
Bill Number (if applicable)

107054
Amendment Barcode (if applicable)

Topic _____

Name Gerald Wester

Job Title _____

Address 101 E College
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone 850 445 9256

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing American Insurance Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016
Meeting Date

SB 1118
Bill Number (if applicable)

107054
Amendment Barcode (if applicable)

Topic Amendmt/Livery Exclusion

Name Mark Delegal

Job Title Counsel

Address 315 S. Calhoun #600
Street

Phone 224-7000

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing State Farm Mutual Automobile Ins Co.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 1118
Bill Number (if applicable)

Topic TNC INSURANCE

Amendment Barcode (if applicable)

Name BRAD NAIL

Job Title RISK MANAGER

Address 1717 Rhode Island Ave NW, 4th floor
Street

Phone 617.686-5871

Washington DC 20036
City *State* *Zip*

Email brad.nail@uber.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Uber

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18
Meeting Date

1118
Bill Number (if applicable)

Topic TNC Insurance

Amendment Barcode (if applicable)

Name Roger Chapin

Job Title VP

Address 1824 W. Gore St
Street

Phone

Orlando FL 32805
City *State* *Zip*

Email

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Mears

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

1118
Bill Number (if applicable)

Topic Trans Network Co INS.

Amendment Barcode (if applicable)

Name Ellyn Bogdanoff

Job Title

Address 908 S. Andrews Ave
Street

Phone

Ft Laud FL 33316
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Taxi Assn.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

1118
Bill Number (if applicable)

Topic TNC Transportation

Amendment Barcode (if applicable)

Name Louis Minard

Job Title President

Address 7413 W. Hesperides St
Street

Phone (813) 9777540

Tampa FL 33614
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Taxicab Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

1118
Bill Number (if applicable)

Topic TNC Insurance

Amendment Barcode (if applicable)

Name John Camillo

Job Title President, Yellow Cabs Broward / Leon

Address 221 W Oakland Pk Blvd
Street
Fort Lauderdale FL
City *State* *Zip*

Phone 954 565 8900

Email JCamillo@bbservicesinc.com

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Yellow Cabs of Broward / Leon

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	CS/SB 1176
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Diaz de la Portilla
SUBJECT:	Dredge and Fill Activities
DATE:	February 17, 2016 REVISED: 02/19/16

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Favorable**
3.	Howard	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1176 authorizes the Department of Environmental Protection (DEP) to implement a voluntary state programmatic general permit for all dredge and fill activities impacting ten acres or less of wetlands or other surface waters, subject to agreement with the United States Army Corps of Engineers (Corps), if the general permit is at least as protective of the environment and natural resources as existing state law under part IV of chapter 373, F.S., and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. Additionally, the bill requires that a person seeking to use a statewide programmatic general permit consent to applicable federal wetland jurisdiction criteria.

There is no fiscal impact to the state unless the DEP seeks an expansion of the State Programmatic General Permit (SPGP) program and receives approval from the Corps. Expansion of the program may require additional resources that are indeterminate.

The bill shall take effect upon becoming law.

II. Present Situation:

Dredging means excavation in wetlands or other surface waters or excavation in uplands that creates wetlands or other surface waters.[1] Filling means deposition of any material in wetlands or

[1] Section 373.403(13), F.S.

other surface waters.[2] Dirt, sand, gravel, rocks, shell, pilings, mulch, and concrete are all considered fill if they are placed in a wetland or other surface water. Dredging and filling activities are regulated by local governments, the water management districts, the Florida Department of Environmental Protection (DEP), and the U.S. Army Corps of Engineers (Corps).

Federal Regulation: Section 10 and Section 404 Permitting

Section 10 of the Rivers and Harbors Act of 1899 (Section 10), regulates virtually all work in, over, and under waters listed as navigable waters of the United States.[3] Examples of projects requiring Section 10 permits include beach nourishment, boat ramps, breakwaters, dredging, filling, mooring buoys, piers, and construction of marina facilities. Additionally, Section 404 of the Clean Water Act governs activities in wetlands and regulates the discharge of "dredged or fill" material into the waters of the United States.[4]

Section 404 establishes a program for permits for the discharge of dredged or fill material into the navigable waters, including wetlands, at specified disposal sites. Activities that are regulated under this program include fill for development, water resource projects, infrastructure development, and mining projects. The Corps has been responsible for regulating activities in navigable waters ways through the granting of permits since the passage of the Rivers and Harbors Act of 1899.[5] Section 404 of the CWA broadened the Corps authority over "dredging and filling" in the waters of the United States, including many wetlands.[6] The Corps administers the permits under the U.S. Environmental Protection Agency (EPA) established guidelines, and subject to an EPA veto on a case-by-case basis.[7]

The basic premise of the permitting program is that no discharge of dredged or fill material may be permitted if:

- A practicable alternative exists that is less damaging to the aquatic environment; or
- The nation's waters would be significantly degraded.[8]

An individual permit is required for potentially significant impacts. Individual permits are reviewed by the Corps, who evaluates applications under a public interest review, as well as the environmental criteria set forth by the EPA.[9] Under the guidelines no discharge of dredged or fill material may be permitted if there is a practicable alternative to the proposed discharge which would have a less adverse impact on the aquatic ecosystem, so long as such alternative does not

[2] Section 373.403(14), F.S.
[3] *See* 33 U.S.C. s. 403 (2012).
[4] *See* 33 U.S.C. s. 1344 (2012).
[5] DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, pg. 2 (Sept. 30, 2005) *available at* http://www.aswm.org/pdf_lib/consolidation_program.pdf.
[6] *Id*.
[7] O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1255 (1995) *available at* http://digitalcommons.law.umaryland.edu/mlr/vol54/iss4/6/.
[8] EPA, *Section 404 Permitting Program*, http://www.epa.gov/cwa-404/section-404-permit-program (last visited Jan. 23, 2016).
[9] *Id*.

have other significant adverse environmental consequences.[10] Practicable alternatives, include, but are not limited to:

- Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters.
- Discharges or dredged or fill material at other locations in waters of the United States or ocean waters.[11]

An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.[12]

State Assumption

The CWA authorizes the EPA to issue general permits on a state, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if determined that the activities in such category:

- Are similar in nature;
- Will cause only minimal adverse environmental effects when performed separately; and
- Will have only minimal cumulative adverse effects on the environment.[13]

General permits are not available for waters that are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto.[14] This exception prohibits general permits for what are termed "Phase I waters", the traditional navigable waters of the United States and adjacent wetlands.[15] Therefore, state assumption under Section 404 does not affect the Corps responsibilities to regulate the navigable waters under Section 10.

To administer its own individual and general permit program, a state must submit an application to the EPA, which includes a complete description of the program it proposes to administer and establish under state law.[16] In addition, the application must include a statement testifying that the laws of the state provide for adequate authority to carry out the described program.[17] The EPA then conducts a rigorous assessment of the state's program and ensures that it is no less stringent than the federal program.[18] If the EPA authorizes the state to "assume" control over the federal Section 404 permit program, then an applicant would only need to get a state permit for dredged or fill material discharges in certain waters. Any general permit issued is only valid for a period of up to five years.[19]

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[10] 40 C.F.R. §404(b)(1).
[11] *Id*.
[12] 40 C.F.R. §404(b)(2).
[13] 33 U.S.C. s. 1344(e).
[14] 33 U.S.C. s. 1344(g).
[15] Houck at 1255.
[16] 33 U.S.C. s. 1344(g).
[17] *Id*.
[18] David Evans, *Clean Water Act §404 Assumption: What is it, how does it work, and what are the benefits?*, Vol. 31, No.3 National Wetlands Newsletter, pg. 18 (May-June 2009) *available at* http://www.aswm.org/pdf_lib/evans_2009.pdf.
[19] 33 U.S.C. s. 1344(h)(1)(A)(ii).

Two states, Michigan and New Jersey, have assumed administration of the federal permit program.[20] Other states have reviewed the possibility of assuming Section 404 permitting but have expressed reasons for not pursuing assumption such as lack of funding, limit of program administration to "non-navigable waters," concerns regarding Federal requirements and oversight, availability of alternative mechanisms for state wetlands protection, and the controversial nature of regulation of wetlands and other aquatic resources.[21] Additionally, the Endangered Species Act poses challenges for state assumption. To be granted assumption a state would have to have an equivalent level of protection as under the Endangered Species Act for listed species.[22]

In 2005, the Florida Legislature directed the DEP to develop a strategy to consolidate, to the maximum extent practicable, federal and state wetland permitting and secure complete authority over dredge and fill activities impacting 10 acres or less of wetlands and other surface waters, including navigable waters, through the environmental resource permitting.[23] Most of the waters in Florida are Phase I waters and are not eligible for assumption.[24] The report concluded that complete assumption of the federal program would require changes to federal and Florida law and recommended that the Legislature consult with the Congressional delegation on opportunities to amend the federal regulations to make assumption more viable.[25]

General Permits

As an alternative to state assumption, the CWA was amended in 1977 to authorize the Corps to issue general permits that:

- Are similar in nature;
- Cause only minimal adverse environmental effects when performed separately;
- Conform to the Section 404(b)(1) guidelines;
- Set forth specific requirements and standards for authorized activities; and
- Terminate within five years.[26]

A category of general permits was set forth by Corps regulations called programmatic permits.[27] The St. Johns River Water Management Program was issued a Programmatic General Permit (PGP) on behalf of the Corps for certain types of projects with minor impacts to wetlands or

[20] O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1268 (1995).
[21] EPA, *State or Tribal Assumption of the Section 404 Permit Program*, http://www.epa.gov/cwa-404/state-or-tribal-assumption-section-404-permit-program (last visited Jan. 23, 2016).
[22] Leah Stetson, Association of State Wetlands Managers, Inc. (ASWM), *State Programmatic General Permits (A Cautionary Tale to Enhance Dialogue)*, pg. 5 (April-May 2008), *available at* http://www.aswm.org/pdf_lib/spgps_0508.pdf.
[23] Ch. 2005-273, s. 3, Laws of Fla.
[24] DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, pg. 2, 8 (Sept. 30, 2005).
[25] *Id*. at 3.
[26] 33 U.S.C. s. 1344(e).
[27] O.A. Houck & Michael Rolland, *Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States*, 54 Md. L. Rev. 1242, 1282 (1995).

surface waters.[28] The scope of the PGP is limited to residential, commercial, or institutional projects with up to three acres of impacts to low quality or urbanized non-tidal wetlands of the following four types:

- Wetlands in pine plantations with raised beds in production over twenty years;
- Herbaceous wetlands in improved pasture;
- Wetlands on parcels bordered by at least 75 percent development; or
- Wetlands covered by greater than 80 percent invasive exotic vegetation.[29]

The Corps combined the concepts of a general permit (for "similar" and "minimal activities"), with a programmatic permit (for "duplicative" state programs) and created a State Programmatic General Permit (SPGP).[30] Under a SPGP, the designated state agency issues permits on behalf of the federal government for projects of a defined and limited impact. A SPGP is designed to streamline the permitting process by eliminating duplication of efforts between the Corps and states, while obeying state and federal wetland laws and regulations. Each SPGP is reviewed and reissued every five years by the Corps district with input from other federal agencies, the state, and the public.[31]

Unlike under complete assumption, under a SPGP program the state or agency is authorized to issue federal permits, which means federal resource agency coordination requirements remain. The state or agency reviews the application and makes the initial determination of the level of impact of the proposed permit. Because projects authorized under the SPGP are limited to minimal individual and cumulative impacts, the complexity and physical size of projects are limited as well.[32] Typical wetland impacts allowed in SPGPs range from 5,000 square feet to one acre.[33]

Section 373.4144, F.S., authorizes the DEP and water management districts to implement a voluntary state programmatic general permit for all dredge and fill activities impacting three acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps, if the general permit is at least as protective of the environment and natural resources as existing state law under part IV of chapter 373, F.S., and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899.

Florida was issued a pilot state programmatic general permit (SPGP I) in 1994 which was limited to four categories of activities, including docks, piers and marinas; shoreline stabilization; boat ramps; and maintenance dredging, in only the counties of Duval, Nassau, Clay, and St. Johns. The permit was expanded in 1996 to include the rest of the DEP's Northeast District (SPGP-II) and to the areas of the other districts, except for Northwest Florida and Monroe County, in 1997

[28] Department of the Army, *Programmatic General Permit SAJ-111*, pg. 1 (Oct. 31, 2014) *available at* http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/PGP/Signed%20SAJ-111.pdf.
[29] *Id*. at 1, 2.
[30] Houck at 1283.
[31] Leah Stetson, Association of State Wetlands Managers, Inc. (ASWM), *State Programmatic General Permits (A Cautionary Tale to Enhance Dialogue)*, pg. 2 (April-May 2008).
[32] DEP, *Consolidation of State and Federal Wetland Permitting Programs Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)*, pg. 5 (Sept. 30, 2005).
[33] *Id*.

(SPGP-III). SPGP III was an expanded version that covered additional types of activities but was later scaled back to the original four project categories.[34]

SPGP-IV was issued in 2006 by the Corps. The permit covered docks, piers, and marinas; shore stabilization; boat ramps; and maintenance and dredging. SPGP-IV was revised in 2011 for use throughout the entire state, except for Monroe County and other specified areas. SPGP IV-R1 covers the following categories of work:

- Shoreline stabilization;
- Boat ramps and boat launch areas;
- Docks, piers, associated facilities, and other minor piling-supported structures; and
- Maintenance dredging of canals and channels (including removal of organic detrital material from freshwater lakes and rivers).[35]

The DEP reviews a permit application for the type of work covered under SPGP IV-R1.[36] The agreement specifies under what circumstances a project is considered green, yellow, or red. If the permit meets all of the conditions of the SPGP program it is processed as "green" in which case issuance of the permit by the DEP constitutes verification of qualification for the corresponding federal permit. "Yellow" projects require additional federal review. The Corps meets with the appropriate federal agencies and a combined federal position on the permit is taken.[37] The position may state that all concerns have been addressed and the project is now considered "green" and the DEP is authorized to issue the permit; that special conditions may be applied; or that the Corps elects to evaluate the project separately.[38] If a project has the potential to adversely impact a federally-listed threatened or endangered species or its designated critical habitat then it is considered "red." If the project is "red" then the DEP and the Corps review the project separately and separate permits are issued.[39]

In August 2015, the Corps published a draft of the proposed SPGP V.[40] The permit would add a fifth category of work to include "transient activities (removal of derelict vessels, scientific devices, upland to upland directional drilling, and geotechnical investigations)" to the list of covered categories.[41] Additionally, the proposed draft would require projects for shoreline stabilization, boat ramps or launches, or dock, piers, or associated facilities that are proposed "anywhere between the shoreline and federally maintained channel, turning basin, etc., of a port or inlet" to be considered "red," and, therefore, such projects would require the Corps to review the project separately.[42]

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[34] ASWM at 5.
[35] U.S. Army Corps of Engineers, *State Programmatic General Permit (SPGP IV-R1) State of Florida*, pg. 1 (July 25, 2011) *available at* http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/SPGP/SPGP_IV_Permit_Instrument.pdf.
[36] SPGP IV-R1 at 1.
[37] *Id*. at 4.
[38] *Id*.
[39] *Id*.
[40] U.S. Corps of Army Engineers, *Draft of Proposed State Programmatic General Permit (SPGP-V), available at* http://www.saj.usace.army.mil/Missions/Regulatory/PublicNotices/tabid/6072/Article/613604/spgp-v-saj-2015-02575.aspx.
[41] *Id*. at 1.
[42] *Id*. at 7, 9, and 12.

Wetlands Delineation

Under Florida law, wetlands are defined as those areas that are inundated or saturated by service water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils.[43] The DEP in coordination with the water management districts created a statewide methodology for the delineation of the extent of wetlands.[44] Section 373.4211, F.S., provides ratification of the statewide delineation rule. All state, local, and regional governments in Florida delineate wetlands in accordance with the state methodology.[45] Under federal law, wetland boundaries are delineated using the U.S. Army Corps of Engineers 1987 wetland delineation manual adopted in coordination with the Environmental Protection Agency.[46] For most projects, the use of the federal delineation method and the state delineation method result in similar wetland boundaries.[47] However, the primary area of difference between the state and federal methodologies is in the indicator status of certain plants and social conditions.[48]

III. Effect of Proposed Changes:

This bill amends s. 373.4144, F.S., to increase the acreage threshold within which the Department of Environmental Protection (DEP) is authorized to implement a voluntary state programmatic general permit (SPGP) for all dredge and fill activities pursuant to an agreement with the United States Army Corps of Engineers. The bill would authorize the DEP to seek an SPGP program covering dredge and fill activities impacting 10 acres or less of wetlands or other surface waters, including navigable waters.

The bill requires an applicant seeking to use a statewide programmatic general permit to consent to the applicable federal wetland jurisdiction criteria that is authorized by regulations implementing Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act for the limited purpose of implementing the state programmatic general permit.

The bill authorizes the DEP to pursue delegation or assumption of the federal permitting program regulating the discharge of dredged or fill material and removes the requirement that assumption encompass all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

The bill shall take effect upon becoming law.

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[43] Section 373.019, F.S.
[44] Chapter 62-340, F.A.C.
[45] DEP, *Homeowner's Guide to Wetlands*, pg. 6 (July 2002), http://www.dep.state.fl.us/water/wetlands/docs/erp/wetland_guide.pdf.
[46] EPA, *Section 404 of the Clean Water Act: How Wetlands are Defined and Identified*, http://www.epa.gov/cwa-404/section-404-clean-water-act-how-wetlands-are-defined-and-identified (last visited Jan. 23, 2016).
[47] DEP at 6.
[48] *Id*. at 8.

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:

Under CS/SB 1176, if the State Programmatic General Permit (SPGP) program is expanded to include dredge and fill activities impacting ten acres or less of wetlands or other surface waters, additional costs incurred by permit applicants may be reduced as a result of the streamlined permitting process.

C. Government Sector Impact:

This bill has an indeterminate fiscal impact to the state. If the Department of Environmental Protection (DEP) seeks expansion of its current State Programmatic General Permit program and approval is granted from the United States Army Corps of Engineers, reprogramming the permit tracking and compliance and enforcement applications and databases would be necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.4144 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on January 27, 2016:
The CS removes the requirement that the delegation or assumption encompass all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Diaz de la Portilla

592-02667-16 20161176c1

A bill to be entitled

An act relating to dredge and fill activities; amending s. 373.4144, F.S.; revising the acreage of wetlands and other surface waters subject to impact by dredge and fill activities under a state programmatic general permit; providing that seeking to use such a permit consents to specified federal wetland jurisdiction criteria; authorizing the Department of Environmental Protection to delegate federal permitting programs for the discharge of dredged or fill material; deleting certain conditions limiting when the department may assume federal permitting programs for the discharge of dredged or fill material; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 373.4144, Florida Statutes, are amended to read:

373.4144 Federal environmental permitting.—

(2)(a) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 10 ~~3~~ acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899.

592-02667-16 20161176c1

(b) By seeking to use a statewide programmatic general permit, an applicant consents to applicable federal wetland jurisdiction criteria, which are not included pursuant to this part, but which are authorized by the regulations implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899 as required by the United States Army Corps of Engineers, notwithstanding s. 373.4145 and for the limited purpose of implementing the state programmatic general permit authorized by this subsection.

(3) The department may pursue ~~This section may not preclude the department from pursuing~~ a series of regional general permits for construction activities in wetlands or surface waters or delegation or ~~complete~~ assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899~~, so long as the assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state~~.

Section 2. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA
40th District

February 11, 2016

The Honorable Tom Lee
Chairman
Appropriations Committee

Via Email

Dear Chair Lee:

I would appreciate it if you would agenda the following bill at your next committee meeting:

CS/SB 1176, Dredge and Fill Activities

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

Cc: Ms. Cindy Kynoch, Staff Director; Ms. Alicia Wells, Committee Administrative Assistant

REPLY TO:
❒ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
❒ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Appropriations

BILL:	CS/SB 1426
INTRODUCER:	Community Affairs Committee; and Senators Stargel and Gaetz
SUBJECT:	Membership Associations
DATE:	February 17, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.	Hand	Klebacha	ED	**Favorable**
3.	Sikes	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1426 prohibits membership associations from expending any money received from public funds on litigation against the state. A membership association is defined as "a not-for-profit corporation… the majority of whose board members are constitutional officers who… operate, control, and supervise public entities that receive annual state appropriations… prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act."

The bill also:

- Requires such organizations to file an annual report with the Legislature.
- Provides that dues paid to a membership association with pubic funds must be assessed for each elected or appointed public officer, but dues are prohibited for officers that elect not to join the association.
- Requires the Auditor General to conduct annual financial and operational audits of each membership association.
- Provides that all records of membership associations are public records.

The bill may have a positive fiscal impact on the state to the extent that it reduces suits against the state by organizations that receive state funds. However, it appears that any such impact would be minimal.

The bill takes effect upon becoming law.

II. Present Situation:

Not For Profit Corporations

In Florida, not for profit corporations are regulated by the Florida Not For Profit Corporation Act (Act), which outlines the requirements for creating and managing a not for profit corporation as well as the powers and duties of the corporation.[1] The Act authorizes not for profit corporations to be created for any lawful purpose or purposes that are not for pecuniary profit and that are not specifically prohibited to corporations by other state laws.[2] The Act specifies that such purposes include charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes.[3]

Florida law authorizes not for profit corporations to operate with the same degree of power provided to for profit corporations in the state, including the power to appoint officers, adopt bylaws, enter into contracts, sue and be sued, and own and convey property.[4] Officers and directors of certain not for profit corporations also are protected by the same immunity from civil liability provided to directors of for profit corporations.[5] Unlike for profit corporations, certain not for profit corporations may apply for exemptions from federal, state, and local taxes.[6]

Not for profit corporations are required to submit an annual report to the Department of State that contains the following information:

- The name of the corporation and the state or country under the law of which it is incorporated;
- The date of incorporation or, if a foreign corporation, the date on which it was admitted to conduct its affairs in the state;
- The address of the principal office and the mailing address of the corporation;
- The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;
- The names and business street addresses of its directors and principal officers;
- The street address of its registered office in the state and the name of its registered agent at that office; and
- Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of the Act.[7]

A not for profit corporation may receive public funds from the state or a local government in certain situations. Public funds are defined as "moneys under the jurisdiction or control of the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof and the judicial branch, and includes all manner of pension and retirement funds and all

[1] Chapter 90-179, L.O.F.
[2] Section 617.0301, F.S.
[3] *Id.*
[4] *See* ss. 617.0302 and 607.0302, F.S.
[5] *See* ss. 617.0834 and 607.0831, F.S.
[6] *See* 26 U.S.C. s. 501; Section 212.08(7)(p), F.S.
[7] Section 617.1622, F.S.

other funds held, as trust funds or otherwise, for any public purpose."[8] The state or a local government may provide public funds to a not for profit corporation through a grant or through payment of membership dues authorized for governmental employees and entities who are members of certain types of not for profit corporations.[9]

District School Boards

Section 4(a) of Article IX of the Florida Constitution provides in part that in each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.[10]

Section 1001.32(2), F.S., provides that in accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.[11]

School districts in Florida are public entities that receive annual state appropriations through a statutorily defined formulaic allocation (e.g., the FEFP) funded and prescribed annually in the General Appropriations Act or the act's implementing bill.[12]

Florida School Board Association

The Florida School Boards Association, Inc. (FSBA) is a not-for-profit corporation representing all school board members in Florida[13]. The FSBA has been the collective voice for Florida school districts since 1930 and is closely allied with other educational and community agencies to work toward improvement of education in Florida.[14]

Duly qualified members of Florida's county school boards are eligible for membership in the FSBA, upon payment of annual dues by the local county school board.[15] The FSBA Board of Directors is comprised of five executive officers, 27 directors representing geographical districts

[8] Section 215.85(3)(b), F.S.
[9] *See, e.g.*, Section 2-103(a), Pinellas County Code (authorizing the board of county commissioners to expend monies from the county general fund for membership fees and dues for county employees and officials for professional associations); Section 120-65(a)(2), South Florida Water Management District Administrative Policies (authorizing the district to pay for an employee's membership in a professional organization not required by his or her job).
[10] Art. IX s. 4(a), Fla. Const.
[11] Section 1001.32(2), F.S.
[12] Sections 1.01(8) and 1011.62, F.S.
[13] Florida School Boards Association, *Mission and Beliefs*, http://www.fsba.org/beliefs/ (last visited January 29, 2016); Florida Department of State Division of Corporations, *Florida School Boards Association, Inc.*, http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FLORIDASCHOOLBOARDASSOCIATION%207033620&aggregateId=domnp-703362-624caed9-dafe-4fc1-a205-1afc640b4365&searchTerm=florida%20school%20board%20association&listNameOrder=FLORIDASCHOOLBOARDASSOCIATION%207033620 (last visited January 29, 2016).
[14] *Id.*
[15] Florida School Boards Association, *Bylaws, Article III – Membership*, http://www.neola.com/fsba/ (last visited January 29, 2016).

in the state, and FSBA members who serve as an officer or member of the Board of Directors of the National School Boards Association or the Southern Regional School Boards Association.[16]

Florida Coalition of School Board Members

The Florida Coalition of School Board Members (FCSBM) is a not-for-profit corporation formed to create and promote public interest in the cause of public education, and to support similar decision makers and organizations in K-12 education.[17]

The FCSBM is a non-partisan individual membership organization for elected school board members.[18] The FCSBM Board of Directors consists of 5 people who are members of district school boards in Florida.[19]

III. Effect of Proposed Changes:

Section 1 creates s. 617.221, F.S., to prohibit certain membership associations from expending any money received from public funds on litigation against the state.

The bill defines a membership association for purposes of this section as "a not-for-profit corporation, including a department or division of such corporation, the majority of whose board members are constitutional officers who, pursuant to s. 1001.32(2), operate, control, and supervise public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. Section 1001.32(2), F.S., provides that district school boards shall operate, control, and supervise all free public schools in their respective districts. The term does not include a labor organization as defined in s. 447.02 or an entity funded through the Justice Administrative Commission."

The bill also requires the membership associations to file an annual report with the Legislature by January 1 of each year covering the following topics:

- The name and address of the membership association and any parent membership association, or state, national, or international membership association with which it is affiliated.
- The names, titles, telephone numbers, and addresses of the principal officers and all representatives of the membership association.
- The fee required to become a member of the membership association, if any, and the annual dues that each member must pay.
- The current annual financial statements of the membership association as described in s. 617.1605, F.S.

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[16] Florida School Boards Association, *Board of Directors*, http://fsba.org/membership/board-of-directors/ (last visited January 29, 2016).
[17] Florida Department of State Division of Corporations, Florida Coalition of School Board Members, Inc., *Electronic Articles of Incorporation*, http://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2015%5C0109%5C70176387.tif&documentNumber=N15000000268 (last visited January 29, 2016)
[18] Florida Coalition of School Board members, *About*, http://www.fcsbm.org/about (last visited January 29, 2016).
[19] Florida Coalition of School Board Members, *Board of Directors*, http://www.fcsbm.org/board_of_directors (last visited January 29, 2016)

- A copy of the current constitution and bylaws of the membership association.
- A description of the assets and liabilities of the association at the beginning and end of the preceding fiscal year.
- A description of the salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and to each employee who, during the preceding fiscal year, received more than $10,000 total from the membership association and any other state, national, or international membership association affiliate.
- The annual amount of the following benefit packages paid to each of the principal officers of the membership association:
  - Health, major medical, vision, dental, and life insurance.
  - Retirement plans.
  - Automobile allowances.
- The per-member amount of annual dues sent from the membership association to each state, national, or international affiliate.
- The total amount of direct or indirect disbursements for lobbying activity at the federal, state, or local level incurred by the membership association, listed by full name and address of each person who received a disbursement.
- The total amount of direct or indirect disbursements for litigation expenses incurred by the membership association, listed by case citation.

The bill also provides that dues paid to a membership association which are paid with public funds shall be assessed for each elected or appointed public officer. If a public officer elects not to join the membership association, the dues assessed to that public officer may not be paid to the membership association.

The bill requires the Auditor General to conduct an annual financial and operational audit of accounts and records of each membership association.

Furthermore, all records of a membership association constitute public records for purposes of ch. 119, F.S.

In effect, the requirements for membership associations under this new statute would most likely apply, at a minimum, to the Florida School Boards Association and the Florida Coalition of School Board Members.

Section 2 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill applies to membership associations organized as a corporation not for profit but does not apply to membership associations organized as a corporation for profit. As such, it may violate the constitutional right of equal protection under the United States Constitution. Unlike the federal Equal Protection Clause, Florida's constitutional right to equal protection only applies to natural persons.[20]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1426 may have an indeterminate negative fiscal impact on membership associations because they would be required to file an annual report with the Legislature.

C. Government Sector Impact:

The bill may have a positive fiscal impact on the state to the extent that it reduces suits against the state by organizations that receive state funds. However, it appears that any such impact would be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 617.221 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on January 26, 2016:
Revises the definition of membership associations. The term now includes only a not-for-

[20] Fla. Const., Art. I, s. 2.

profit corporation the majority of whose members are constitutional officers who, pursuant to s. 1001.32(2), F.S., operate, control, and supervise public entities that receive annual state appropriations. The reference to s. 1001.32(3), F.S., was removed.

B. Amendments:

None.

By the Committee on Community Affairs; and Senators Stargel and Gaetz

578-02604-16 20161426c1

A bill to be entitled

An act relating to membership associations; creating s. 617.221, F.S.; defining the term "membership association"; requiring membership associations to file an annual report with the Legislature; specifying the requirements for the annual report; prohibiting a membership association from using public funds for certain litigation; requiring the assessment of dues paid to a membership association by certain elected and appointed officials with public funds; requiring the Auditor General to conduct certain audits annually; specifying that all membership association records constitute public records under certain law; providing an effective date.

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

Section 1. Section 617.221, Florida Statutes, is created to read:

617.221 Membership associations; reporting requirements; restrictions on use of funds.—

(1) As used in this section, the term "membership association" means a not-for-profit corporation, including a department or division of such corporation, the majority of whose board members are constitutional officers who, pursuant to s. 1001.32(2), operate, control, and supervise public entities that receive annual state appropriations through a statutorily defined formulaic allocation that is funded and prescribed annually in the General Appropriations Act or the substantive bill implementing the annual appropriations act. The term does not include a labor organization as defined in s. 447.02 or an

578-02604-16 20161426c1

entity funded through the Justice Administrative Commission.

(2) A membership association shall file a report with the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must provide:

(a) The name and address of the membership association and any parent membership association or state, national, or international membership association with which it is affiliated.

(b) The names, titles, telephone numbers, and addresses of the principal officers and all representatives of the membership association.

(c) The amount of the fee required to become a member of the membership association, if any, and the annual dues each member must pay.

(d) The current annual financial statements of the membership association as described in s. 617.1605.

(e) A copy of the current constitution and bylaws of the membership association.

(f) A description of the assets and liabilities of the membership association at the beginning and end of the preceding fiscal year.

(g) A description of the salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and to each employee who, during the preceding fiscal year, received more than $10,000 in the aggregate from the membership association and any other state, national, or international membership association affiliated with the membership association.

(h) The annual amount of the following benefit packages paid to each of the principal officers of the membership association:

1. Health, major medical, vision, dental, and life insurance.

2. Retirement plans.

3. Automobile allowances.

(i) The per-member amount of annual dues sent from the membership association to each state, national, or international affiliate.

(j) The total amount of direct or indirect disbursements for lobbying activity at the federal, state, or local level incurred by the membership association, listed by full name and address of each person who received a disbursement.

(k) The total amount of direct or indirect disbursements for litigation expenses incurred by the membership association, listed by case citation.

(3) A membership association may not expend moneys received from public funds, as defined in s. 215.85(3), on litigation against the state.

(4) Dues paid to a membership association which are paid with public funds shall be assessed for each elected or appointed public officer. If a public officer elects not to join the membership association, the dues assessed to that public officer may not be paid to the membership association.

(5) The Auditor General shall conduct an annual financial and operational audit of accounts and records of each membership association.

(6) All records of a membership association constitute

public records for purposes of chapter 119.

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

February 3, 2016

The Honorable Tom Lee
Senate Appropriations Committee, Chair
418 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Lee:

I respectfully request that SB 1426, related to *Membership Associations*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 15

Cc: Cindy Kynoch/ Staff Director
Lisa Roberts/ AA
Alicia Weiss/AA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

SB 1426
Bill Number (if applicable)

Topic Membership Associations

Amendment Barcode (if applicable)

Name SANDRA MALDONADO-ROSS

Job Title Teacher of Students with Special Needs

Address 6919 Compass Ct
Street

Orlando, FL 32810
City *State* *Zip*

Phone 407-694-6481

Email Sandrarossrec@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.18.16
Meeting Date

1426
Bill Number (if applicable)

Topic Membership Association

Amendment Barcode (if applicable)

Name Debbie Mortham

Job Title Advocacy Director

Address 215 S. Monroe St.
Street

Phone 251-2278

TLH FL 32301
City *State* *Zip*

Email debbie@excelined.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Foundation for Florida's Future

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/16
Meeting Date

1426
Bill Number (if applicable)

Topic Membership Associations

Amendment Barcode (if applicable)

Name Andrea Messina

Job Title Executive Director

Address 203 South Monroe
Street

Phone 850-414-2578

Tallahassee FL 32301
City *State* *Zip*

Email messina@fsba.org

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing Florida School Boards Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations

BILL:	CS/SB 1584
INTRODUCER:	Transportation Committee; and Senator Smith and others
SUBJECT:	Suspended Driver Licenses
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Eichin	TR	**Fav/CS**
2.	Harkness	Sadberry	ACJ	**Recommend: Favorable**
3.	Harkness	Kynoch	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1584 establishes a Driver License Reinstatement Days pilot program in certain counties throughout the state. The program requires the Department of Highway Safety and Motor Vehicles (DHSMV), state attorney, public defender's office, circuit and county courts, clerk of the court, and interested organizations within each county, participate in the pilot program. The purpose of the program is to reinstate suspended driver licenses. The clerk of the circuit court (clerk of court) is authorized to waive certain fees to facilitate driver license reinstatements for eligible persons. By October 1, 2017, the DHSMV is required to report the results of the program and a recommendation to continue, discontinue, or expand the program to the Governor, Senate President, and Speaker of the House of Representatives.

This section is repealed October 1, 2017.

The bill does not have a discernible state fiscal impact. See Section V.

The act takes effect July 1, 2016.

II. Present Situation:

Driver License Suspensions and Revocations

Individuals who violate Florida laws may be sanctioned through the suspension or revocation of their driving privilege. Driver license revocations and suspensions, respectively, terminate or temporarily withdraw one's driving privilege.[1] To reinstate a suspended or revoked license, individuals must fulfill legal and financial obligations. Drivers will need to pay reinstatement fees in addition to any outstanding obligations to legally drive.

Entities at both state and local level play a role in driver license suspensions. At the state level, the DHSMV is responsible for issuing driver licenses and administering driver license examinations, as well as suspending and revoking driver licenses, which includes providing notice required by law and communicating license reinstatement requirements. The role of other state agencies is to notify the DHSMV when individuals violate laws that can be sanctioned by driver license suspension. For example, if a parent is delinquent on child support payments, the Department of Revenue (DOR) notifies the DHSMV to start the process of driver license suspension.

At the local level, clerks of court are responsible for collecting financial obligations imposed by a court for criminal and traffic offenses, as well as maintaining court records and ensuring that court orders are carried out. Clerks of court use driver license sanctions as a means to improve collections of fines and fees. Section 322.245, F.S., requires clerks of court to notify the DHSMV when a driver fails to pay court-imposed financial obligations for criminal offenses. Failure to pay can result in a license suspension. In addition, clerks of court provide information to the DHSMV about any court actions that require the suspension or revocation of driver licenses. On behalf of DHSMV, clerks of court and county tax collectors may reinstate driving privileges and collect reinstatement fees.

Effectiveness

As three-fourths of drivers with suspended or revoked licenses are estimated to continue to drive, indicating driver license sanctions may not effectively force compliance.[2] Driver license suspension and revocation penalties are commonly used to punish individuals who do not pay certain financial penalties and obligations, sometimes whether or not the individual can afford to do so. Penalties for driving with a suspended or revoked license increase per offense, causing individuals suffering from financial hardship to become stuck in a self-perpetuating cycle. Drivers who were unable to pay their original fine or court fees may lose their ability to legally get to and from work. If they are caught driving while the license is suspended or revoked, they will incur additional court costs and penalties.

Driver License Reinstatement Fees

Section 322.21(8), F.S., requires a person who applies for reinstatement following a driver license suspension or revocation to pay a service fee of $45 following a suspension and $75

[1] Sections 322.01(36) and (40), F.S.
[2] *Id.*

following a revocation, in addition to the $25 fee to replace their license if necessary. "Failure to comply" suspensions require a $60 reinstatement fee.

Driver License Reinstatement Days[3]

In July 2015, Sarasota County held a Driver License Reinstatement Day. The purpose of the event was to negotiate fees with people whose licenses were suspended because of a failure to pay fines. An estimated 2,000 people attended, of which approximately 500 were served. Of those 500 people, 100 were able to reinstate their license. Some were not eligible for reinstatement because they were habitual traffic offenders, under suspension for a DUI, or other were facing charges. All 500 people experienced some level of reduction in the local county fees they owed.

In April 2015, the Duval County Clerk of the Circuit Court, in conjunction with 59 other clerk of courts' offices, participated in a statewide campaign called "Operation Green Light." The goal of the operation was to allow individuals who were delinquent in traffic or court fines and fees to make those payments and assist them in getting their licenses reinstated. The 40 percent collections surcharge was waived for these individuals.[4]

III. Effect of Proposed Changes:

The bill establishes a Driver License Reinstatement Days program in Broward, Duval, Hillsborough, Miami-Dade, Orange, and Pinellas County.

The purpose of the program is to reinstate suspended driver licenses. A person is eligible for reinstatement under this program if the period of his or her suspension has elapsed, the person completed any required course or program, the person is otherwise eligible for reinstatement, and the license was suspended for:

- Driving without a valid license;
- Driving with a suspended license;
- Failing to make payments on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with provisions of ch. 318, F.S., relating to disposition of a traffic citation, or ch. 322, F.S., relating to driver licenses.

A person is not eligible for reinstatement under this program if the person's driver license is suspended or revoked for:

- Failing to fulfill any court-ordered or administratively established child support obligations;
- A violation under s. 316.193, F.S., involving driving under the influence of alcohol or drugs;
- Failing to complete a required driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program;
- Commission of a traffic-related felony;

[3] Email from the DHSMV, *Draft – SB 1584 Legislative Bill Analysis* (Jan. 22, 2016) (on file with the Senate Committee on Transportation).
[4] *See* American Safety Council, *Florida's Operation Green Light Program* (April 17, 2015), http://blog.americansafetycouncil.com/florida-operation-green-light/ (last visited Jan. 24, 2016).

- Becoming a habitual traffic offender; or
- An offense committed outside a county in which the pilot program is being implemented.

The DHSMV has indicated within these six counties approximately 541,681 licenses are suspended for failure to appear or comply with a traffic summons, failure to pay a traffic fine, or failure to pay or appear on a criminal charge. These counts are broken down by county and suspension categories below[5]:

Suspended Driver Category:	Broward	Duval	Hillsboro.	Dade	Orange	Pinellas	Total
Fail to Appear-Traffic Summons	23,567	17,214	12,454	56,296	9,410	6,177	125,118
Fail to Comply-Traffic Summons	2,073	1,964	1,488	2,198	1,800	872	10,395
Failed to pay Traffic Fine-Penalty	63,221	47,965	44,622	118,794	51,034	28,158	353,794
Criminal-Fail to Pay	17,574	3,352	11,060	4,291	2,646	2,515	41,438
Criminal- Failed to Appear	2,703	998	2,729	2,509	1,003	994	10,936
	109,138	71,493	72,353	184,088	65,893	38,716	541,681

Participants within each county implementing the pilot program shall include the DHSMV, state attorney, public defender's office, circuit and county courts, clerk of court, and interested organizations within each county participate in the pilot program.

The clerk of court, in consultation with the other participants, will select one or more days for the event. The bill requires a person seeking reinstatement through the program to pay the full reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate the reinstatement.

The clerk of court and the DHSMV are responsible for verifying any information necessary for reinstatement of a driver license under the program.

The DHSMV, by October 1, 2017, is required to report the results of the program and a recommendation to continue, discontinue, or expand the program to the Governor, Senate President, and Speaker of the House of Representatives.

This section is repealed October 1, 2017.

The act takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[5] *Supra* note 3.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1584 will have a positive impact on individuals who may have their financial obligations waived or reduced, and assistance in reinstating their driver license.

The bill may also have a negative impact on collection agents working with the clerk of courts, if collection fees and costs are waived.

C. Government Sector Impact:

The bill may have a negative impact to local clerks of court if clerks waive fees and costs, as permitted in the bill.

The costs associated with implementing the program are unknown; therefore, the bill could have a negative fiscal impact on the required participants.

The bill will likely have a positive impact on state revenue from the increase in reinstatement fees collected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of law that will be repealed October 1, 2017.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on January 27, 2016:
The CS amended the language of SB 1584 to maintain consistency with statutory provisions.

B. Amendments:

None.

By the Committee on Transportation; and Senators Smith and Thompson

596-02695-16 20161584c1

A bill to be entitled

An act relating to suspended driver licenses; establishing a Driver License Reinstatement Days pilot program in certain counties to facilitate reinstatement of suspended driver licenses; specifying participants; providing duties of the clerks of court and the Department of Highway Safety and Motor Vehicles; authorizing the clerk of court to compromise certain fees and costs; providing for program eligibility; directing the department to make a report to the Governor and Legislature; providing for future repeal; providing an effective date.

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

Section 1. Driver License Reinstatement Days.—

(1) There is established a Driver License Reinstatement Days pilot program in Broward, Duval, Hillsborough, Miami-Dade, Orange, and Pinellas Counties for the purpose of reinstating suspended driver licenses. Participants within each county shall include the Department of Highway Safety and Motor Vehicles, the state attorney, the public defender's office, the circuit and county courts, the clerk of court, and interested community organizations.

(2) The clerk of court, in consultation with the other participants, shall select 1 or more days for an event at which persons with suspended driver licenses may have their licenses reinstated pursuant to this section. A person must pay the full reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate the reinstatement.

(3)(a) A person is eligible for reinstatement under the

596-02695-16 20161584c1

pilot program if the person's driver license was suspended because the person:

1. Was driving without a valid driver license;

2. Was driving with a suspended license;

3. Failed to make payments on penalties in collection;

4. Failed to appear in court for a traffic violation; or

5. Failed to comply with provisions of chapter 318, Florida Statutes, relating to disposition of a traffic citation, or chapter 322, Florida Statutes, relating to driver licenses.

(b) Notwithstanding paragraphs (4)(a)-(c), a person is eligible for reinstatement under the pilot program if the period of suspension has elapsed, the person has completed any required course or program as described in paragraph (4)(c), and the person is otherwise eligible for reinstatement of his or her driver license.

(4) A person is not eligible for reinstatement under the pilot program if:

(a) The person's driver license is under suspension because the person failed to fulfill court-ordered or administratively established child support obligations;

(b) The person's driver license is under suspension or has been revoked for a violation under s. 316.193, Florida Statutes, involving driving under the influence of alcohol or drugs;

(c) The person's driver license is under suspension because the person has not completed a driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program required under s. 316.192, s. 316.193, s. 322.2616, s. 322.271, or s. 322.291, Florida Statutes;

(d) The person's driver license has been revoked for

commission of a traffic-related felony;

(e) The person's driver license was revoked because the person is a habitual traffic offender under s. 322.264, Florida Statutes; or

(f) The person's driver license is under suspension for an offense committed outside a county in which the pilot program is being implemented.

(5) The clerk of court and the Department of Highway Safety and Motor Vehicles shall verify any information necessary for reinstatement of a driver license under the pilot program.

(6) By October 1, 2017, the Department of Highway Safety and Motor Vehicles shall report the results of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall include any recommendation by the department to continue, discontinue, or expand the pilot program and any necessary legislative action to facilitate a continuation or expansion of the pilot program.

(7) This section is repealed October 1, 2017.

Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2016
Meeting Date

1584
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Suspended Driver License

Name Sheldon Gusky

Job Title Executive Director

Address 103 North Gadsden Street
Street

Tallahassee Florida 32301
City *State* *Zip*

Phone 850.488.6850

Email sgusky@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/16
Meeting Date

1584
Bill Number (if applicable)

Topic DRIVERS License Reinstatement

Amendment Barcode (if applicable)

Name DAN HENDRICKSON

Job Title ADVOCACY Committee

Address 319 E PARK Ave
Street
Tallahassee FL 32302
City *State* *Zip*

Phone 850/570 1967

Email dhendrickson@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing BIG BEND Mental Health Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

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 Appropriations

BILL:	CS/SB 7058
INTRODUCER:	Appropriations Committee and Education Pre-K - 12 Committee
SUBJECT:	Early Childhood Development
DATE:	February 17, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Scott	Klebacha		**ED Submitted as Committee Bill**
1.	Sikes	Kynoch	AP	**Fav/CS**

I. Summary:

CS/SB 7058 revises the Early Steps program in the Department of Health (DOH) and revises provisions of the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant.

The Early Steps program provides screening and early intervention services to parents with infants and toddlers who have or may have a developmental delay. The program is funded with both state and federal funds.

The bill expands the duties of the DOH clearinghouse for information on early intervention services for parents and providers of early intervention services. The bill provides goals for the Early Steps program, defines terms, and assigns duties to the DOH as well as the local Early Steps offices. The bill sets eligibility criteria for the program. The bill requires a statewide plan, performance standards, and an accountability report each year. The bill designates the Florida Interagency Coordinating Council for Infants and Toddlers as the state interagency coordination council required under federal law. The bill provides procedures for the successful transition of children from the Early Steps program to the local school districts. Finally, the bill repeals outdated sections of statute relating to the Early Steps program.

The bill also revises provisions relating to health and safety standards and eligibility for the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant.

Specifically, the bill:

- Increases health and safety standards.
- Expands requirements for employment history checks and child care personnel background screenings.
- Expands availability of child care information, including inspection and monitoring reports.

- Expands School Readiness provider standards to include preservice and inservice training requirements and appropriate group size and staff-to-child ratios.
- Aligns child eligibility criteria to the federal requirements

According to the DOH, the bill will require expenditures of approximately $130,988 in general revenue, $3,999 of which is nonrecurring, in the 2016-2017 fiscal year. The Early Steps program received a recurring appropriation of $11 million of general revenue in the 2015-2016 fiscal year, which will be adequate to cover those expenditures during Fiscal Year 2016-2017. The DOH also reports that, if the bill's new eligibility criteria are implemented, at least $1,317,000 in recurring general revenue would be needed. However, the bill directs the DOH to implement the new criteria subject to specific funding provided in the General Appropriations Act.

The bill also increases licensing and inspection requirements related to the School Readiness program. SB 2500, the Senate 2016-2017 General Appropriations Bill, appropriates $614,755 to the Department of Children and Families for these additional requirements.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Early Steps Program

Florida's Early Steps program has its foundation in federal law. The Individuals with Disabilities Education Act (IDEA) originally was enacted by Congress in 1975 to help ensure that children with disabilities have the opportunity to receive a free appropriate public education, just like other children. The law has been revised many times. The most recent amendments expanded the program to pre-school children and were passed by Congress in December 2004, with final regulations published in August 2006 (Part B for school-aged children) and in September 2011 (Part C, for babies and toddlers).

The Early Steps program (Part C of the IDEA) provides services to families with infants and toddlers from birth until three years of age who have or are at risk of developmental delays or disabilities.[1] The federal government created grants to assist states in providing early intervention programs under Part C of the IDEA.[2] The program has no financial eligibility requirements and is an entitlement to any eligible child.[3] Florida's Early Steps program is administered by Children's Medical Services within the Department of Health (DOH). The DOH contracts with hospitals and not-for-profit organizations such as Easter Seals across the state for coordination and delivery of services.[4]

States are not required to participate in Early Steps. The federal government encourages states to participate through its grant funding. By accepting a grant, states are required to abide by federal

[1] s. 391.302, F.S.
[2] 34 *Code of Federal Regulations* Part 303
[3] *Id*.
[4] Office of Program Policy Analysis & Government Accountability. Florida Legislature, Early Steps Has Revised Reimbursement Rates but Needs to Assess Impact of Expanded Outreach on Child Participation, Report No. 08-44, (July 2008) http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0844rpt.pdf.

law and regulations for the program. For Fiscal Year 2015-2016, Florida's federal grant award is $22.6 million.[5] The 2015-2016 General Appropriations Act provides $45.2 million general revenue for the program.[6]

The amount of a state's federal grant award is based each year on the number of children in the state's general population under three years of age, based upon United States Census Bureau data.[7] The amount of the grant is capped annually on that basis, regardless of the number of children receiving services. Federal data indicate that Florida served 1.9 percent of the population of infants and toddlers younger than three years of age in 2012, or 12,036 children.[8]

Federal rules governing early intervention programs for infants and toddlers with disabilities are found in Part 303 of Title 34, Code of Federal Regulations. The rules provide the purpose of the early intervention program, the activities that may be supported, the children that are eligible to be served, the types of services available, the definition of service coordination activities, and use of service coordinators.

Subpart D of Part 303 provides for a statewide system of early intervention services. This system must include a public awareness program; a comprehensive "child find" system that includes referral procedures; and procedures and timelines for comprehensive, multidisciplinary evaluations of children and an identification of family needs. States must also develop policies and procedures for individualized family support plans (IFSP). Early Steps lead agencies must ensure the IFSP is developed and implemented for each eligible child.

Federal law allows for early intervention services for an eligible child and the child's family to begin before the completion of the evaluation and assessment, under certain conditions. While each agency or person involved in the provision of early intervention services is responsible for making good-faith efforts to assist the eligible child in achieving the outcomes in the IFSP, the law states that any agency or person cannot be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

States must establish qualifications for personnel providing early intervention services to eligible children and families.[9] States must have standards to ensure that necessary personnel carry out the purposes of the program and are appropriately and adequately prepared and trained.[10] Parents must give written consent before the Early Steps program may evaluate, assess, and provide early intervention services to a child.[11] In the event parents do not give consent, reasonable efforts should be made to ensure the parent is aware of the nature of the evaluation,

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[5] Department of Health, presentation to the Senate Appropriations Subcommittee on Health and Human Services, October 7, 2015, available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/AHS/MeetingRecords/MeetingPacket_3169.pdf (last visited Dec. 11, 2015).
[6] *See* Specific Appropriation 530, s. 3, ch. 2015-232, Laws of Florida.
[7] U.S. Department of Education, Office of Special Education (OSEP), *Grants for Infants and Families, Part C of IDEA, Grants for Infants and Toddlers, http://www2.ed.gov/programs/osepeip/index.html* (last visited: Nov. 16, 2015).
[8] U.S. Department of Education, *36th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2014, pg. 261,* http://www2.ed.gov/about/reports/annual/osep/2014/parts-b-c/36th-idea-arc.pdf (last visited: Nov. 16, 2015).
[9] 34 CFR. s. 303.361
[10] *Id.*
[11] 34 CFR. s 303.404

assessment, and services available, and understands that without consent, the child will not be able to receive the evaluation, assessment, or services.[12]

Federal regulations require that service providers give written notice to parents before the provider initiates or changes the identification, evaluation, or placement of the child, or provides the appropriate early intervention services to the child and the child's family.[13] Procedures to resolve disputes through a mediation process, at a minimum, must be available whenever a parent requests a hearing.[14] The mediation process is voluntary, must be conducted by a qualified mediator, and cannot be used to deny or delay a parent's right to a due process hearing.[15] Mediation must be timely scheduled. Any agreement reached by the parties to the dispute must be in writing, and discussions that occur during mediation are confidential and cannot be used as evidence in any subsequent proceeding.[16] The state must bear the cost of the mediation process.[17] During the mediation, the child must continue to receive early intervention services currently being provided.[18] If the complaint involves an application for initial services, the child must receive any services that are not in dispute.[19]

State policy must specify which functions and services will be provided at no cost to all parents and which will be subject to a system of payments.[20] The inability of parents of an eligible child to pay for services must not result in a denial of services to the child or the child's family.[21] States may establish a schedule of sliding fees for early intervention services but some functions such as evaluation, assessment, and service coordination are not subject to fees.[22]

Funds provided by the federal grant may be used only for early intervention services for an eligible child who is not entitled to these services under any other federal, state, local or private source.[23] Interim payments to avoid delay in providing needed services to an eligible child are allowed but the agency that has ultimate responsibility for the payment must reimburse the program.[24]

Each State that receives financial assistance for the program must establish a State Interagency Coordinating Council (council). The council must be appointed by the Governor and membership must reasonably represent the population of the state.[25] The council is to advise and assist the lead agency in:

- The development and implementation of the policies that constitute the statewide system;

[12] *Id.*
[13] 34 CFR s. 303.403
[14] 34 CFR s. 303.419
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] 34 CFR s. 303.425
[19] *Id.*
[20] 34 CFR s. 303.520
[21] *Id.*
[22] 34 CFR s. 303.521
[23] 34 CFR s.303.527
[24] *Id.*
[25] 34 CFR s. 303.600

- Achieving the full participation, coordination, and cooperation of all appropriate public agencies in the state; and
- The integration of services for infants and toddlers with disabilities and at-risk toddlers and their families regardless of whether at-risk infants and toddlers are eligible for early intervention services.[26]

Eligible infants and toddlers are identified through referrals from hospitals, healthcare providers, and childcare staff who may interact on a regular basis with infants and toddlers. Parents may also contact the state's program directly for an evaluation and assessment. Before any evaluation can be conducted, parental consent is required. Evaluations and assessments must be completed within 45 days of the referral.[27]

Early intervention skills for this population focus on five areas:
- Physical (reaching, rolling, crawling, and walking);
- Cognitive (thinking, learning, and solving problems);
- Communication (talking, listening, and understanding);
- Social/emotional (playing and feeling secure and happy); and
- Adaptive/self-help (eating and dressing).[28]

States must have various components under 20 U.S.C. 1435, which broadly covers administrative, oversight, and regulatory functions, such as:
- Policies to ensure appropriate delivery of early intervention services to infants, toddlers, and their families;
- Individualized family service plans (IFSP) for each infant or toddler with a disability;
- A properly functioning administrative structure that identifies eligible infants and toddlers using a rigorous definition of "developmental delay," makes referrals, centrally collects information, provides a directory of services and resources, incorporates data, and has a comprehensive system for personnel development;
- A single line of responsibility in a lead agency designated by the Governor, including financial responsibility, provision of services, resolution of disputes, and development of procedures to ensure timeliness of services; and
- A state interagency coordination council.

The IDEA requires that early intervention services be provided, to the maximum extent appropriate, in natural environments[29] such as the child's home.[30] Florida has increased the

[26] 34 CFR s. 303.650
[27] Center for Parent Information and Resources, *Basics of the Early Intervention Process under Part C of the IDEA - Handout I*, http://www.parentcenterhub.org/wp-content/uploads/repo_items/legacy/partc/handout1.pdf (last visited: Nov. 16, 2015).
[28] Center for Parent Information and Resources, *Overview of Early Intervention - What is Early Intervention?* http://www.parentcenterhub.org/repository/ei-overview/ (last visited: Nov. 16, 2015).
[29] A "natural environment" includes the child's home or a community setting where children would typically be participating if they did not have a disability. See "Program Description," U.S. Department of Education, available at http://www2.ed.gov/programs/osepeip/index.html (last visited Dec. 11, 2015).
[30] U.S. Department of Education, Office of Special Education (OSEP), *Grants for Infants and Families, Part C of IDEA, Grants for Infants and Toddlers*, http://www2.ed.gov/programs/osepeip/index.html (last visited: Nov. 16, 2015).

delivery of services in the home or community based setting since 2008 but still falls below the national average for home-based services.[31]

Child Care and Development Block Grant (CCDBG)

The Office of Child Care (OCC) of the United States Department of Health and Human Services supports low-income working families by providing access to affordable, high-quality early care and afterschool programs.[32] The OCC administers the Child Care and Development Fund (CCDF) and works with state, territory and tribal governments to provide support for children and their families to promote family economic self-sufficiency and to help children succeed in school and life through affordable, high-quality early care and afterschool programs.[33] The CCDF provides funding for state efforts to provide child care services for low-income family members who work, train for work, attend school, or whose children receive or need to receive protective services.[34] Block grant funding can be used for public or private, religious or non-religious, and center or home-based care.[35] Child care programs that accept funding must comply with state health and safety requirements.[36]

School Readiness Program

Florida's Office of Early Learning (OEL)[37] is the designated lead agency for purposes of administering the CCDF Block Grant Trust Fund and provides state-level administration for the School Readiness program.[38] The School Readiness program is a state-federal partnership between OEL and the OCC.[39] The School Readiness program receives funding from a mixture of state and federal sources, including the federal CCDF, the federal Temporary Assistance for Needy Families (TANF) block grant, general revenue and other state funds.[40] The School Readiness program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.

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[31] U.S. Department of Education, 36th *Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2014*, pg. 120-121, http://www2.ed.gov/about/reports/annual/osep/2014/parts-b-c/36th-idea-arc.pdf (last visited: Nov. 16, 2015).

[32] Office of Child Care, *What We Do*, http://www.acf.hhs.gov/programs/occ/about/what-we-do (last visited January 27, 2016).

[33] *Id.*

[34] U.S. Department of Education, Office of Non-Public Education, http://www2.ed.gov/about/offices/list/oii/nonpublic/childcare.html (last visited January 27, 2016).

[35] *Id.*

[36] *Id.*

[37] In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE).The office is administered by an executive director and is fully accountable to the Commissioner of Education but independently exercises all powers, duties, and functions prescribed by law, as well as adopting rules for the establishment and operation of the School Readiness program and the Voluntary Prekindergarten Education Program. Section 1, 2013-252, L.O.F., *codified as* s. 1001.213, F.S.

[38] Section 1002.82(1), F.S.

[39] Part VI, ch. 1002, F.S.; 42 U.S.C. ss. 618 & 9858-9858q.

[40] Specific Appropriation 82, s. 2, ch. 2015-232, L.O.F.

The School Readiness program utilizes a variety of providers to deliver program services, such as licensed and unlicensed child care providers and public and nonpublic schools.[41] The Florida Department of Children and Families' Office of Child Care Regulation (OCCR), as the agency responsible for the state's child care provider licensing program, regulates some, but not all, of the child care providers that provide early learning programs.[42] The program is administered at the county or regional level by early learning coalitions (ELC).[43]

In order to be eligible to deliver the School Readiness program, a provider must be:[44]

- A licensed child care facility;
- A licensed or registered family day care home (FDCH);
- A licensed large family child care home (LFCCH);
- A public school or non-public school;
- A license-exempt faith-based child care provider;
- A before-school or after-school program; or
- An informal child care provider authorized in the state's CCDF plan.[45]

Reauthorization of the CCDBG Act

On November 19, 2014, the CCDBG Act of 2014 was signed into law reauthorizing the CCDF for the first time since 1996.[46] The new law prescribes health and safety requirements for School Readiness program providers and requires transparent information to parents and the general public about available child care choices.[47]

While Florida's School Readiness program currently meets many of the new federal requirements, there are specific federal requirements that necessitate changes to Florida law including:[48]

- Screening for child care staff to include searches of the National Sex Offender Registry, as well as searches of state criminal records, the sex offender registry and child abuse and neglect registry of any state in which the child care personnel resided during the preceding 5 years.[49]

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[41] Section 1002.88(1)(a), F.S.
[42] *See* ss. 402.301-319, F.S., and part VI, ch. 1002, F.S.
[43] Sections 1002.83-1002.85, F.S. There are currently 30 ELCs, but 31 is the maximum permitted by law. Section 1002.83(1), F.S. *See* Florida's Office of Early Learning, *Early Learning Coalition Directory* (Jan. 11, 2016), *available at* http://www.floridaearlylearning.com/sites/www/Uploads/files/Coalition/Coalition%20Directory/CoalitionDirectory%201.11.16.pdf.
[44] Section 1002.88(1)(a), F.S.
[45] *See* Florida Office of Early Learning, *Florida's Child Care and Development Fund State Plan FFY 2014-15, available at* http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/2014-2015_CCDF_Plan_%20Optimized.pdf. The CCDF State Plan for 2016-2018 is due March 1, 2016 to the Administration for Children and Families and will become effective, once approved, on June 1, 2016. Florida Office of Early Learning, CCDF Plan, http://www.floridaearlylearning.com/oel_resources/ccdf_plan.aspx (last visited January 27, 2016).
[46] Office of Child Care, *CCDF Reauthorization*¸ http://www.acf.hhs.gov/programs/occ/ccdf-reauthorization (last visited January 27, 2016).
[47] *Id.*
[48] Pub. L. No. 113-186, 128 Stat. 1971, Child Care and Development Block Grant Act Reauthorization (2014), *available at* https://www.gpo.gov/fdsys/pkg/PLAW-113publ186/pdf/PLAW-113publ186.pdf.
[49] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658H(b)

- Posting of monitoring and inspection reports through electronic means.[50]
- Providing parents and the general public, information, via a website, regarding:
  - The availability of child care services to promote informed child care choices;
  - The process for licensing child care providers;
  - The conducting of background screening;
  - The monitoring and inspection of child care providers; and
  - The offenses that would prevent individuals and entities from serving as child care providers in the state.[51]
- Inspecting license-exempt providers receiving CCDBG funds for compliance with health, safety, and fire standards.[52]
- Requiring disaster preparedness plan to include procedures for staff and volunteer emergency preparedness training and practice drills.[53]
- Certifying in the state plan, compliance with the child abuse reporting requirements of the Child Abuse Prevention and Treatment Act.[54]

Furthermore, pursuant to the CCDBG Act of 2014, child care personnel are ineligible for employment by a School Readiness provider if an individual:[55]

- Refuses to consent to a criminal background check;
- Knowingly makes a materially false statement in connection with such criminal background check;
- Is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry;
- Has been convicted of a felony consisting of:
  - Murder;
  - Child abuse or neglect;
  - A crime against children, including child pornography;
  - Spousal abuse;
  - A crime involving rape or sexual assault;
  - Kidnapping;
  - Arson;
  - Physical assault or battery; or
  - A drug-related offense committed during the preceding 5 years; or
- Has been convicted of a violent misdemeanor committed as an adult against a child, including:
  - Child abuse;
  - Child endangerment;
  - Sexual assault; or
  - A misdemeanor involving child pornography.

[50] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(C)
[51] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(C)
[52] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(K).
[53] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(U).
[54] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658E(c)(2)(L).
[55] 42 U.S.C. 9858f(c)(1).

Child Care Personnel

The Department of Children and Families (DCF) is responsible for the licensure and regulation of child care facilities, family day care homes, and large family child care homes.[56] However, there are child care providers that are not licensed by the DCF, including those that are required only to register with the DCF and those that are exempt from licensure by virtue of being an integral part of a church or parochial school.[57]

All child care personnel employed in a setting regulated by the DCF, whether licensed, registered, or religious-exempt, are required to undergo background screening using the level 2 standards set forth in chapter 435, F.S.[58] If an applicant for employment is disqualified from working with children due to the results of the level 2 background screening, the Secretary of the DCF may grant an exemption from that disqualification.[59]

Level 2 Background Screening

A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.[60] A vendor may perform all or part of the electronic fingerprinting of an applicant and submit those fingerprints to the FDLE, which in turn runs statewide records checks and submits the electronic file to the FBI for national records checks.[61]

Once the background screening is completed, and FDLE has received the information from the FBI, the criminal history information is transmitted to the DCF. The DCF then determines if the screening contains any disqualifying information for employment. The DCF must ensure that no applicant has been arrested for, is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contendere or guilty to any prohibited offense including, but not limited to, such crimes as sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and lascivious behavior, drugs, and domestic violence.[62] If the DCF finds that an individual has a history containing any of these offenses, they must disqualify that individual from employment in child care settings regulated by the DCF.[63]

Exemptions from Disqualification

The Secretary of the DCF is authorized to grant an exemption from disqualification to applicants for employment, including child care applicants, based on the following:[64]

[56] Sections 402.301-402.319, F.S.
[57] Section 402.316, F.S.
[58] Section 402.305 (2)(a), F.S. The level 2 background screening standards are set forth in s. 435.04, F.S.
[59] Section 435.07, F.S.
[60] Section 435.04(1)(a), F.S.
[61] *Id.* at (1).
[62] *Id.* at (2).
[63] Section 435.07, F.S.
[64] *Id.* at (1).

- Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under chapter 425, F.S., or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.[65]

The Secretary of the DCF may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, specified felony or misdemeanor offenses solely by reason of any pardon, executive clemency, or restoration of civil rights.[66] Also, an exemption may not be granted to anyone who is considered a sexual predator,[67] career offender,[68] or sexual offender (unless not required to register).[69]

III. Effect of Proposed Changes:

The bill revises the Early Steps program in the Department of Health (DOH) and revises provisions of the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant.

Developmental Disabilities Information Clearinghouse

The bill amends s. 383.141, F.S., to provide additional direction to the information clearinghouse administered by the DOH. The bill requires the clearinghouse to provide comprehensive information to educate parents and providers of early intervention services. The DOH is directed to refer to children with developmental disabilities or delays as children with "unique abilities" whenever possible in the clearinghouse. The DOH is to provide education and training to parents and providers through the clearinghouse. The clearinghouse is to promote public awareness of intervention services available to parents of children with unique abilities.

The bill deletes from Florida law the requirement for the DOH to establish access to clearinghouse information on its Internet website. The program is already subject to similar requirements under federal regulations.

[65] *Id.* at (1)(a)4. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense. *Id.*
[66] Sections 435.03 and 435.04(2), F.S.
[67] Section 775.21, F.S.
[68] Section 775.261, F.S.
[69] Sections 943.0435 and 943.04354, F.S.

Early Steps Program

The bill renames the Florida Infants and Toddlers Early Intervention Program under the Children's Medical Services program as the Early Steps program and adds to the DOH's responsibilities the administration of the Early Steps program.

The bill also updates the legislative intent of the Early Steps program and establishes goals for the program. Under the bill, the program must:

- Integrate information and coordinate services with other programs serving infants and toddlers;
- Enhance the development of infants and toddlers with disabilities and delays;
- Increase the awareness among parents, health care providers, and the public of the importance of the first three years of life for the development of the brain;
- Maintain the importance of the family in early intervention services;
- Provide comprehensive and coordinated services;
- Ensure timely evaluation of infants and toddlers and provide individual planning for intervention services;
- Improve the capacity of health care providers to serve children with unique needs; and
- Ensure programmatic and financial accountability through the establishment of a high-capacity data system, active monitoring of performance indicators, and ongoing quality improvement.

The bill amends s. 391.302, F.S., to add definitions for "developmental delay," "developmental disability," "habilitative services and devices," "local program office," and "rehabilitative services and devices" for the Early Steps program. The bill also deletes the definitions of "in-hospital intervention services" and "parent support and training."

The bill amends s. 391.308, F.S., to provide additional structure and guidance for the Early Steps program. The bill establishes performance standards for the program relating to services and referrals, individualized family support plans, and outcomes for infants and toddlers served.

The bill provides new duties to the DOH for the Early Steps program. The bill requires the DOH to:

- Develop a statewide plan for the program;
- Ensure that local program offices educate hospitals providing Level II and Level III neonatal intensive care about the program and the referral process for evaluation and intervention services;
- Establish standards and qualifications for service providers used by the program;
- Develop uniform procedures to determine eligibility for the program;
- Provide a statewide format for individualized family support plans;
- Promote interagency cooperation with the Medicaid program, the Department of Education, and programs providing child screening;
- Provide guidance to local program offices for coordinating Early Step program benefits with other programs such as Medicaid and private insurance;

- Provide a mediation process and, if necessary, an appeals process for parents whose infant or toddler is determined not to be eligible for developmental evaluation or early intervention services or who were denied financial support for such services;
- Competitively procure local offices to administer the Early Steps program;
- Establish performance measures and standards to evaluate local Early Step offices; and
- Provide technical assistance to local Early Step offices.
- Report to the Governor and Legislature on the performance of the Early Steps program December 1st each year.

The bill establishes eligibility criteria for the Early Steps program. The eligibility criteria are based on federal law with the underlying premise that infants and toddlers are eligible for an evaluation to determine the presence of a developmental disability or the risk of a developmental delay based on a physical or medical condition. The DOH is directed to apply specified criteria to determine eligibility for post-evaluation services if funding is provided, and the associated applicable eligibility criteria are identified, in the General Appropriations Act. Infants and toddlers meeting the following criteria will be determined eligible:

- Having a developmental delay based on informed clinical opinion and an evaluation using a standard evaluation instrument which results in a score that is 1.5 standard deviations from the mean in two or more of the following domains: physical, cognitive, communication, social or emotional, and adaptive;
- Having a developmental delay based on informed clinical opinion and an evaluation using a standard evaluation instrument which results in a score that is 2.0 standard deviations from the mean in one of the following domains: physical, cognitive, communication, social or emotional, and adaptive;
- Having a developmental delay based on informed clinical opinion and an evaluation using a standard evaluation instrument which results in a score that is 1.5 standard deviations from the mean in one or more of the following domains: physical, cognitive, communication, social or emotional, and adaptive;
- Having a developmental delay based on informed clinical opinion; or
- Being at risk of developmental delay based on an established condition known to result in developmental delay, or a physical or mental condition known to create a risk of developmental delay.

The bill provides duties to the Early Steps offices. These offices must:

- Evaluate a child within 45 days after referral;
- Notify parents if the child is eligible for services and provide an appeal process to those parents whose child is found ineligible;
- Make interagency agreements with local school districts;
- Provide services directly or procure early intervention services;
- Provide services in a natural environment to the extent possible;
- Develop an individualized family support plan for each child served in the program;
- Assess the progress of the child in meeting the goals of the individualized family support plan;
- Provide service coordination to ensure that assistance for families is properly managed, regardless of whether the program provides the services directly or through referral to other service providers;

- Make agreements with local Medicaid managed care organizations;
- Make agreements with local private insurers;
- Provide data required by the DOH to assess the performance of the program; and
- Facilitate transition to the local school district after age three for a child needing special education or related services.

The bill designates the Florida Interagency Coordinating Council for Infants and Toddlers as the state interagency coordination council required under federal law.

School Readiness Program

This bill revises provisions relating to health and safety standards and eligibility for the School Readiness program to align to federal requirements in the 2014 reauthorization of the Child Care and Development Block Grant (CCDBG).

Specifically, the bill:
- Increases health and safety standards.
- Expands requirements for employment history checks and child care personnel background screenings.
- Expands availability of child care information, including inspection and monitoring reports.
- Expands School Readiness provider standards to include preservice and inservice training requirements and appropriate group size and staff-to-child ratios.
- Aligns child eligibility criteria to the federal requirements.

Health & Safety Standards

Current law requires a child care provider to provide basic health and safety of its premises and facilities and compliance with requirements for age-appropriate immunizations of children. A licensed provider may satisfy this requirement through compliance with current licensing standards for child care facilities, large family child care homes, or family day care homes. Faith-based child care providers, informal child care providers, and nonpublic schools exempt from licensure satisfy this requirement by posting a health and safety checklist adopted by the Office of Early Learning (OEL).

Pursuant to the CCDBG Reauthorization, all School Readiness program providers must meet a minimum level of health and safety requirements and receive at least one annual inspection. The bill requires registered or license-exempt School Readiness providers to comply with the health and safety checklist and training requirements adopted by the OEL, as well as the child care personnel background screening requirements.

Screening of Child Care Personnel

The bill redefines the definition of "screening" to include employment history checks consisting of documented attempts to contact each employer that employed the child care applicant within the preceding 5 years and documented findings from such contact. The bill requires that a screening include a search of the criminal history records, sexual predator and sexual offender registry, and child abuse and neglect registry of any state in which the applicant resided during

the preceding 5 years. In effect, the bill revises the definition of screening to align to the new federal requirements, and requires that any School Readiness provider screen individuals seeking employment in a manner consistent with the requirements.

The bill authorizes the use of information in the Department of Children and Families' (DCF) Central Abuse Hotline for purposes of conducting background screenings of child care personnel. Generally, the use of information in the Central Abuse Hotline is prohibited from being used for employment screenings, except in specified instances (*e.g.*, child or adult protective investigations or licensure or approval of child care facilities). Furthermore, the bill authorizes employees, authorized agents, and contract providers of the OEL to have access to DCF child abuse and neglect reports and records to ensure compliance with the federal requirements.

Disqualification from Employment

The bill prohibits the removal of or exemption from disqualification from employment for any current or prospective School Readiness provider personnel if an individual is registered, or is required to be registered, as a sex offender.[70] The bill disqualifies current or prospective personnel from employment with a School Readiness provider if they are arrested and awaiting final disposition or convicted of, or plead guilty to, specified state felony and misdemeanor offenses or similar offenses in another jurisdiction, including federal offenses. The bill also disqualifies a person from employment with a School Readiness provider regardless of any prior exemption from disqualification. The change in law is consistent with the federal prohibitions relating to child care personnel of School Readiness providers pursuant to the CCDBG Act of 2014.[71]

Affidavit of Compliance with Mandatory Child Abuse Reporting

The bill requires each child care facility, family day care home, and large family day care home to annually submit an affidavit of compliance with the mandatory reporting requirements in Florida law.[72] The change in law is consistent with the new federal requirement that child care personnel of School Readiness providers be familiar and comply with the mandatory child abuse, abandonment, or neglect reporting requirements.

DCF Inspection & Monitoring of School Readiness Providers

The bill requires School Readiness providers to permit access to the DCF to inspect facilities, personnel, and records for the purpose of verifying compliance with the standards established and adopted by the OEL. Under the bill, inspection and monitoring of School Readiness providers by the DCF or local licensing agencies must be governed by a memorandum of understanding between the OEL and the DCF or local licensing agencies for verifying compliance solely with the standards contained in the statewide provider contract and the health and safety checklist. Furthermore, the bill requires that a School Readiness provider's contract be terminated if the provider refuses permission for entry or inspection.

[70] 42 U.S.C. 9858f(c)(1)(C).
[71] 42 U.S.C. 9858f(c)(1).
[72] *See* s. 39.201, F.S.

Child Care Information

The bill requires the DCF and local licensing agencies to make electronically available to the public all licensing standards and procedures, health and safety standards for School Readiness providers, monitoring and inspection reports, and the names and addresses of licensed child care facilities, School Readiness providers, and licensed or registered family day care homes. Additionally, the bill requires the DCF to make publicly available the following information:

- Number of deaths, serious injuries, and instances of substantiated child abuse which have occurred in child care settings each year;
- Research and best practices in child development; and
- Resources regarding social-emotional development, parent and family engagement, healthy eating, and physical activity.

Requiring that such information be made publicly available is consistent with the federal requirements in the CCDBG Reauthorization.

Office of Early Learning's Duty to Align Standards to the Federal Requirements

Consistent with federal law, the bill requires the OEL to:

- Develop and implement strategies to increase the supply and improve the quality of child care services for infants and toddlers, children with disabilities, children who receive care during nontraditional hours, children in underserved areas, and children in areas that have significant concentrations of poverty and unemployment.
- Establish preservice and inservice training requirements addressing, at a minimum:
  - School Readiness child development standards.
  - Health and safety requirements.
  - Social-emotional behavior intervention models.
- Establish standards for emergency preparedness plans.
- Establish group size and staff-to-child ratios.
- Establish eligibility criteria, including income-based limitations and family assets.

Child Eligibility

The bill revises provisions relating to child eligibility to align to the federal requirement that once a child is deemed eligible for School Readiness program services, he or she remains eligible for a minimum of 12 months. Under current law, a child's eligibility may be redetermined at any time based on a change in family income or upon notification of a parent's change in employment status. Consequently, the bill repeals a requirement that each early learning coalition (ELC) redetermine eligibility twice per year for an additional 50 percent of the ELC's enrollment through a statistically valid random sampling.

Pursuant to the CCDBG Reauthorization, the bill provides that if a child's eligibility priority category requires the child to be from a working family, he or she will become ineligible to receive School Readiness program services if the parent does not reestablish employment or resume attendance at a job training or educational program within 90 days after becoming unemployed or ceasing to attend the job training or educational program. Current law affords a parent 60 days to reestablish employment or resume attendance at a job training or educational

program. The change will provide additional time for parents to reestablish employment or resume attendance at a job training or educational program, so that their children may continue to receive School Readiness program services.

Also, the bill authorizes an ELC to temporarily waive the parent's copayment for a child whose family's income is at or below the federal poverty level and whose family experiences a natural disaster or an event that limits the parent's ability to pay. Authorizing waiver of the copayment is consistent with federal law, which contemplates that a copayment not be a barrier to families receiving School Readiness program services.

The bill provides an effective date of July 1, 2016.

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:

Under CS/SB 7058, additional guidance provided for the administration of the Early Steps program may result in additional opportunities for private providers of early childhood intervention services.

The Department of Health (DOH) reports that local Early Steps agencies under contract with the DOH might experience an increased workload associated with additional duties under the bill. Such an effect, if any, has an indeterminate cost.[73]

[73] Department of Health, *2016 Agency Legislative Bill Analysis, SB 7034*, Jan. 20, 2016, on file with the Senate Appropriations Subcommittee on Health and Human Services.

C. Government Sector Impact:

The DOH reports that eligibility criteria created under the bill, if applied, will result in at least 1,000 children becoming eligible for Early Steps who would not otherwise qualify, at a cost of $1,317,000 recurring general revenue.[74] However, the bill directs the DOH to apply the new eligibility criteria if specific funding is provided, and the associated applicable eligibility criteria are identified, in the General Appropriations Act (GAA), and the GAA might or might not include such funding.

The DOH also reports that, under the bill:[75]

- The requirements for new hotlines specific to Down syndrome and other prenatally diagnosed developmental disabilities, the expansion of the clearinghouse database, and the accompanying duties to revise the DOH website, will cost $130,988 in general revenue, $3,999 of which is nonrecurring, which includes funding for a new full-time equivalent (FTE) position; and
- The DOH might experience a recurring, but indeterminate, increase in workload associated with other duties that existing DOH resources cannot absorb.

The bill also requires additional licensing and inspections related to the School Readiness program. SB 2500, the Senate 2016-2017 General Appropriations Bill, appropriates $614,755 to the Department of Children and Families for these additional requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Health (DOH) reports that:[76]

- The bill's provision for eligibility criteria to be implemented "if specific funding is provided" could create a conflict with the program's nature as an entitlement program; and
- The bill's requirements for posting public information do not meet the federal requirements for stakeholder input and that a more realistic implementation date for the bill's changes to eligibility criteria would be January 2017.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.201, 39.202, 383.141, 391.025, 391.026, 391.301, 391.302, 391.308, 402.302, 402.3025, 402.306, 402.311, 402.319, 413.092, 435.07, 1002.82, 1002.84, 1002.87, 1002.88,1002.89, and 1003.575.

The bill repeals the following sections of the Florida Statutes: 391.303, 391.304, 391.305, 391.306, 391.307, and 402.3057.

[74] *Id.*
[75] *Id.*
[76] *Id*.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on February 18, 2016:
The committee substitute revises the Early Steps program in the Department of Health (DOH). Specifically, the bill

- Expands the duties of the DOH clearinghouse for information on early intervention services for parents and providers of early intervention services.
- Provides goals for the Early Steps program, defines terms, and assigns duties to the DOH as well as the local Early Steps offices.
- Sets eligibility criteria for the program.
- Requires a statewide plan, performance standards, and an accountability report each year.
- Designates the Florida Interagency Coordinating Council for Infants and Toddlers as the state interagency coordination council required under federal law.
- Provides procedures for the successful transition of children from the Early Steps program to the local school districts.
- Repeals outdated sections of statute relating to the Early Steps program.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (6) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s.

39.202(2)(a) and (h) or s. 402.302(15). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

Section 2. Paragraph (a) of subsection (2) of section 39.202, Florida Statutes, is amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, or county agencies responsible for carrying out:

1. Child or adult protective investigations;

2. Ongoing child or adult protective services;

3. Early intervention and prevention services;

4. Healthy Start services;

5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, ~~or~~ family day care homes, ~~or informal child care~~ providers who receive school readiness funding under part VI of chapter 1002, or other homes used to provide for the care and welfare of children; or

6. Services for victims of domestic violence when provided

by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

Section 3. Subsections (2) and (3) of section 383.141, Florida Statutes, are amended to read:

383.141 Prenatally diagnosed conditions; patient to be provided information; definitions; information clearinghouse; advisory council.—

(2) When a developmental disability is diagnosed based on the results of a prenatal test, the health care provider who ordered the prenatal test, or his or her designee, shall provide the patient with current information about the nature of the developmental disability, the accuracy of the prenatal test, and resources for obtaining relevant support services, including hotlines, resource centers, and information clearinghouses related to Down syndrome or other prenatally diagnosed developmental disabilities; support programs for parents and families; and developmental evaluation and intervention services under this part ~~s. 391.303~~.

(3) The Department of Health shall develop and implement a comprehensive information clearinghouse to educate health care providers, inform parents, and increase public awareness regarding brain development, developmental disabilities and delays, and all services, resources, and interventions available to mitigate the effects of impaired development among children. The clearinghouse must use the term "unique abilities" as much

as possible when identifying infants or children with developmental disabilities and delays. The clearinghouse must provide:

(a) Health information on conditions that may lead to impaired development of physical, learning, language, or behavioral skills.

(b) Education and information to support parents whose unborn children have been prenatally diagnosed with developmental disabilities or whose children have diagnosed or suspected developmental delays.

(c) Education and training for health care providers to recognize and respond appropriately to developmental disabilities, delays, and conditions related to disabilities or delays. Specific information approved by the advisory council shall be made available to health care providers for use in counseling parents whose unborn children have been prenatally diagnosed with developmental disabilities or whose children have diagnosed or suspected developmental delays.

(d) Promotion of public awareness of availability of supportive services, such as resource centers, educational programs, other support programs for parents and families, and developmental evaluation and intervention services.

(e) Hotlines specific to Down syndrome and other prenatally diagnosed developmental disabilities. The hotlines and the department’s clearinghouse must provide information to parents and families or other caregivers regarding the Early Steps Program under s. 391.301, the Florida Diagnostic and Learning Resources System, the Early Learning program, Healthy Start, Help Me Grow, and any other intervention programs. Information

offered must include directions on how to obtain early intervention, rehabilitative, and habilitative services and devices ~~establish on its Internet website a clearinghouse of information related to developmental disabilities concerning providers of supportive services, information hotlines specific to Down syndrome and other prenatally diagnosed developmental disabilities, resource centers, educational programs, other support programs for parents and families, and developmental evaluation and intervention services under s. 391.303. Such information shall be made available to health care providers for use in counseling pregnant women whose unborn children have been prenatally diagnosed with developmental disabilities.~~

(4)(a) There is established an advisory council within the Department of Health which consists of health care providers and caregivers who perform health care services for persons who have developmental disabilities, including Down syndrome and autism. This group shall consist of nine members as follows:

1. Three members appointed by the Governor;

2. Three members appointed by the President of the Senate; and

3. Three members appointed by the Speaker of the House of Representatives.

(b) The advisory council shall provide technical assistance to the Department of Health in the establishment of the information clearinghouse and give the department the benefit of the council members' knowledge and experience relating to the needs of patients and families of patients with developmental disabilities and available support services.

(c) Members of the council shall elect a chairperson and a


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vice chairperson. The elected chairperson and vice chairperson shall serve in these roles until their terms of appointment on the council expire.

(d) The advisory council shall meet quarterly to review this clearinghouse of information, and may meet more often at the call of the chairperson or as determined by a majority of members.

(e) The council members shall be appointed to 4-year terms, except that, to provide for staggered terms, one initial appointee each from the Governor, the President of the Senate, and the Speaker of the House of Representatives shall be appointed to a 2-year term, one appointee each from these officials shall be appointed to a 3-year term, and the remaining initial appointees shall be appointed to 4-year terms. All subsequent appointments shall be for 4-year terms. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(f) Members of the council shall serve without compensation. Meetings of the council may be held in person, without reimbursement for travel expenses, or by teleconference or other electronic means.

(g) The Department of Health shall provide administrative support for the advisory council.

Section 4. Paragraph (c) of subsection (1) of section 391.025, Florida Statutes, is amended to read:

391.025 Applicability and scope.—

(1) The Children’s Medical Services program consists of the following components:

(c) The developmental evaluation and intervention program,

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including the Early Steps ~~Florida Infants and Toddlers Early Intervention~~ Program.

Section 5. Subsection (19) is added to section 391.026, Florida Statutes, to read:

391.026 Powers and duties of the department.—The department shall have the following powers, duties, and responsibilities:

(19) To serve as the lead agency in administering the Early Steps Program pursuant to part C of the federal Individuals with Disabilities Education Act and part III of this chapter.

Section 6. Section 391.301, Florida Statutes, is amended to read:

391.301 Early Steps Program; establishment and goals ~~Developmental evaluation and intervention programs; legislative findings and intent~~.—

(1) The Early Steps Program is established within the department to serve infants and toddlers who are at risk of developmental disabilities based on a physical or mental condition and infants and toddlers with developmental delays by providing developmental evaluation and early intervention and by providing families with training and support services in a variety of home and community settings in order to enhance family and caregiver competence, confidence, and capacity to meet their child's developmental needs and desired outcomes ~~The Legislature finds that the high-risk and disabled newborn infants in this state need in-hospital and outpatient developmental evaluation and intervention and that their families need training and support services~~. ~~The Legislature further finds that there is an identifiable and increasing number of infants who need developmental evaluation and~~

~~intervention and family support due to the fact that increased numbers of low-birthweight and sick full-term newborn infants are now surviving because of the advances in neonatal intensive care medicine; increased numbers of medically involved infants are remaining inappropriately in hospitals because their parents lack the confidence or skills to care for these infants without support; and increased numbers of infants are at risk due to parent risk factors, such as substance abuse, teenage pregnancy, and other high-risk conditions.~~

(2) The program may include screening and referral ~~It is the intent of the Legislature to establish developmental evaluation and intervention~~ services at all hospitals providing Level II or Level III neonatal intensive care services, in order to promptly identify newborns with disabilities or with conditions associated with risks of developmental delays so that families ~~with high-risk or disabled infants~~ may gain as early as possible the services and skills they need to support their infants' development ~~infants~~.

(3) The program must ~~It is the intent of the Legislature that a methodology be developed to~~ integrate information and coordinate services ~~on infants with potentially disabling conditions~~ with other programs serving infants and toddlers ~~early intervention programs~~, including, but not limited to, ~~Part C of Pub. L. No. 105-17 and~~ the Healthy Start program, the newborn screening program, and the Blind Babies Program.

(4) The program must:

(a) Provide services to enhance the development of infants and toddlers with disabilities and delays.

(b) Expand the recognition by health care providers,


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families, and the public of the significant brain development that occurs during a child's first 3 years of life.

(c) Maintain the importance of the family in all areas of the child's development and support the family's participation in early intervention services and decisions affecting the child.

(d) Operate a comprehensive, coordinated interagency system of early intervention services and supports in accordance with part C of the federal Individuals with Disabilities Education Act.

(e) Ensure timely evaluation, individual planning, and early intervention services necessary to meet the unique needs of eligible infants and toddlers.

(f) Build the service capacity and enhance the competencies of health care providers serving infants and toddlers with unique needs and abilities.

(g) Ensure programmatic and fiscal accountability through establishment of a high-capacity data system, active monitoring of performance indicators, and ongoing quality improvement.

Section 7. Section 391.302, Florida Statutes, is amended to read:

391.302 Definitions.—As used in ss. 391.301-391.308 ~~ss. 391.301-391.307~~, the term:

(1) "Developmental delay" means a condition, identified and measured through appropriate instruments and procedures, which may delay physical, cognitive, communication, social or emotional, or adaptive development.

(2) "Developmental disability" means a condition, identified and measured through appropriate instruments and

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procedures, which may impair physical, cognitive, communication, social or emotional, or adaptive development.

(3) "Developmental intervention" or "early intervention" means individual and group ~~individualized~~ therapies and services needed to enhance both the infant's or toddler's growth and development and family functioning. The term includes habilitative services and assistive technology devices, rehabilitative services and assistive technology devices, and parent support and training.

(4) "Habilitative services and devices" means health care services and assistive technology devices that help a child maintain, learn, or improve skills and functioning for daily living.

(5) ~~(2)~~ "Infant or toddler" or "child" means a child from birth until the child's third birthday.

(6) "Local program office" means an office that administers the Early Steps Program within a municipality, county, or region.

(7) "Rehabilitative services and devices" means restorative and remedial services that maintain or enhance the current level of functioning of a child if there is a possibility of improvement or reversal of impairment.

~~(3) "In-hospital intervention services" means the provision of assessments; the provision of individualized services; monitoring and modifying the delivery of medical interventions; and enhancing the environment for the high-risk, developmentally disabled, or medically involved infant or toddler in order to achieve optimum growth and development.~~

~~(4) "Parent support and training" means a range of services~~


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~~to families of high-risk, developmentally disabled, or medically involved infants or toddlers, including family counseling; financial planning; agency referral; development of parent-to-parent support groups; education concerning growth, development, and developmental intervention and objective measurable skills, including abuse avoidance skills; training of parents to advocate for their child; and bereavement counseling.~~

Section 8. Sections 391.303, 391.304, 391.305, 391.306, and 391.307, Florida Statutes, are repealed.

Section 9. Section 391.308, Florida Statutes, is amended to read:

391.308 Early Steps ~~Infants and Toddlers Early Intervention~~ Program.—The department shall ~~Department of Health may~~ implement and administer part C of the federal Individuals with Disabilities Education Act (IDEA), which shall be known as the "Early Steps ~~"Florida Infants and Toddlers Early Intervention~~ Program."

(1) PERFORMANCE STANDARDS.—The department shall ensure that the Early Steps Program complies with the following performance standards:

(a) The program must provide services from referral through transition in a family-centered manner that recognizes and responds to unique circumstances and needs of infants and toddlers and their families as measured by a variety of qualitative data, including satisfaction surveys, interviews, focus groups, and input from stakeholders.

(b) The program must provide individualized family support plans that are understandable and usable by families, health care providers, and payers and that identify the current level


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of functioning of the infant or toddler, family supports and resources, expected outcomes, and specific early intervention services needed to achieve the expected outcomes, as measured by periodic system independent evaluation.

(c) The program must help each family to use available resources in a way that maximizes the child's access to services necessary to achieve the outcomes of the individualized family support plan, as measured by family feedback and by independent assessments of services used by each child.

(d) The program must offer families access to quality services that effectively enable infants and toddlers with developmental disabilities and developmental delays to achieve optimal functional levels as measured by an independent evaluation of outcome indicators in social or emotional skills, communication, and adaptive behaviors.

(2) DUTIES OF THE DEPARTMENT.—The department shall:~~,~~

(a) ~~Jointly with the Department of Education, shall~~ Annually prepare a grant application to the United States Department of Education for funding early intervention services for infants and toddlers with disabilities, from birth through 36 months of age, and their families pursuant to part C of the federal Individuals with Disabilities Education Act.

(b)~~(2) The department,~~ Jointly with the Department of Education, provide ~~shall include~~ a reading initiative as an early intervention service for infants and toddlers.

(c) Annually develop a state plan for the Early Steps Program.

1. The plan must assess the need for early intervention services, evaluate the extent of the statewide need that is met

by the program, identify barriers to fully meeting the need, and recommend specific action steps to improve program performance.

2. The plan must be developed through an inclusive process that involves families, local program offices, health care providers, and other stakeholders.

(d) Ensure local program offices educate hospitals that provide Level II and Level III neonatal intensive care services about the Early Steps Program and the referral process for the provision of developmental evaluation and intervention services.

(e) Establish standards and qualifications for developmental evaluation and early intervention service providers, including standards for determining the adequacy of provider networks in each local program office service area.

(f) Establish statewide uniform protocols and procedures to determine eligibility for developmental evaluation and early intervention services.

(g) Establish a consistent, statewide format and procedure for preparing and completing an individualized family support plan.

(h) Promote interagency cooperation and coordination, with the Medicaid program, the Department of Education program pursuant to part B of the federal Individuals with Disabilities Education Act, and programs providing child screening such as the Florida Diagnostic and Learning Resources System, the Office of Early Learning, Healthy Start, and the Help Me Grow program.

1. Coordination with the Medicaid program shall be developed and maintained through written agreements with the Agency for Health Care Administration and Medicaid managed care organizations as well as through active and ongoing

communication with these organizations. The department shall assist local program offices to negotiate agreements with Medicaid managed care organizations in the service areas of the local program offices. Such agreements may be formal or informal.

2. Coordination with education programs pursuant to part B of the federal Individuals with Disabilities Education Act shall be developed and maintained through written agreements with the Department of Education. The department shall assist local program offices to negotiate agreements with school districts in the service areas of the local program offices.

(i) Develop and disseminate the knowledge and methods necessary to effectively coordinate benefits among various payer types.

(j) Provide a mediation process and if necessary, an appeals process for applicants found ineligible for developmental evaluation or early intervention services or denied financial support for such services.

(k) Competitively procure local program offices to provide services throughout the state in accordance with chapter 287. The department shall specify the requirements and qualifications for local program offices in the procurement document.

(l) Establish performance standards and other metrics for evaluation of local program offices, including standards for measuring timeliness of services, outcomes of early intervention services, and administrative efficiency. Performance standards and metrics shall be developed in consultation with local program offices.

(m) Provide technical assistance to the local program

offices.

(3) ELIGIBILITY.—The department shall apply the following eligibility criteria if specific funding is provided, and the associated applicable eligibility criteria are identified, in the General Appropriations Act:

(a) Infants and toddlers are eligible for an evaluation to determine the presence of a developmental disability or the risk of a developmental delay based on a physical or medical condition.

(b) Infants and toddlers determined to have a developmental delay based on informed clinical opinion and an evaluation using a standard evaluation instrument which results in a score that is 1.5 standard deviations from the mean in two or more of the following domains: physical, cognitive, communication, social or emotional, and adaptive.

(c) Infants and toddlers determined to have a developmental delay based on informed clinical opinion and an evaluation using a standard evaluation instrument which results in a score that is 2.0 standard deviations from the mean in one of the following domains: physical, cognitive, communication, social or emotional, and adaptive.

(d) Infants and toddlers determined to have a developmental delay based on informed clinical opinion and an evaluation using a standard evaluation instrument which results in a score that is 1.5 standard deviations from the mean in one or more of the following domains: physical, cognitive, communication, social or emotional, and adaptive.

(e) Infants and toddlers determined to have a developmental delay based on informed clinical opinion.

(f) Infants and toddlers at risk of developmental delay based on an established condition known to result in developmental delay, or a physical or mental condition known to create a risk of developmental delay.

(4) DUTIES OF THE LOCAL PROGRAM OFFICES.—A local program office shall:

(a) Evaluate a child to determine eligibility within 45 calendar days after the child is referred to the program.

(b) Notify the parent or legal guardian of his or her child's eligibility status initially and at least annually thereafter. If a child is determined not to be eligible, the local program office must provide the parent or legal guardian with written information on the right to an appeal and the process for making such an appeal.

(c) Secure and maintain interagency agreements or contracts with local school districts in a local service area.

(d) Provide services directly or procure services from health care providers that meet or exceed the minimum qualifications established for service providers. The local program office must become a Medicaid provider if it provides services directly.

(e) Provide directly or procure services that are, to the extent possible, delivered in a child's natural environment, such as in the child's home or community setting. The inability to provide services in the natural environment is not a sufficient reason to deny services.

(f) Develop an individualized family support plan for each child served. The plan must:

1. Be completed within 45 calendar days after the child is

referred to the program;

2. Be developed in conjunction with the child's parent or legal guardian who provides written consent for the services included in the plan;

3. Be reviewed at least every 6 months with the parent or legal guardian and updated if needed; and

4. Include steps to transition to school or other future services by the child's third birthday.

(g) Assess the progress of the child and his or her family in meeting the goals of the individualized family support plan.

(h) For each service required by the individualized family support plan, refer the child to an appropriate service provider or work with Medicaid managed care organizations or private insurers to secure the needed services.

(i) Provide service coordination, including contacting the appropriate service provider to determine whether the provider can timely deliver the service, providing the parent or legal guardian with the name and contact information of the service provider and the date and location of the service of any appointment made on behalf of the child, and contacting the parent or legal guardian after the service is provided to ensure that the service is timely delivered and to determine whether the family requests additional services.

(j) Negotiate and maintain agreements with Medicaid providers and Medicaid managed care organizations in its area.

1. With the parent's or legal guardian's permission, the services in the child's approved individualized family support plan shall be communicated to the Medicaid managed care organization. Services that cannot be funded by Medicaid must be

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specifically identified and explained to the family.

2. The agreement between the local program office and Medicaid managed care organizations must establish methods of communication and procedures for the timely approval of services covered by Medicaid.

(k) Develop agreements and arrangements with private insurers in order to coordinate benefits and services for any mutual enrollee.

1. The child's approved individualized family support plan may be communicated to the child's insurer with the parent's or legal guardian's permission.

2. The local program office and private insurers shall establish methods of communication and procedures for the timely approval of services covered by the child's insurer, if appropriate and approved by the child's parent or legal guardian.

(l) Provide to the department data necessary for an evaluation of the local program office performance.

(5) ACCOUNTABILITY REPORTING.—By December 1 of each year, the department shall prepare and submit a report that assesses the performance of the Early Steps Program to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Florida Interagency Coordinating Council for Infants and Toddlers. The department must address the performance standards in subsection (1) and report actual performance compared to the standards for the prior fiscal year. The data used to compile the report must be submitted by each local program office in the state. The department shall report on all of the following measures:

(a) Number and percentage of infants and toddlers served with an individualized family support plan.

(b) Number and percentage of infants and toddlers demonstrating improved social or emotional skills after the program.

(c) Number and percentage of infants and toddlers demonstrating improved use of knowledge and cognitive skills after the program.

(d) Number and percentage of families reporting positive outcomes in their infant's and toddler's development as a result of early intervention services.

(e) Progress toward meeting the goals of individualized family support plans.

(f) Any additional measures established by the department.

(6) STATE INTERAGENCY COORDINATING COUNCIL.—The Florida Interagency Coordinating Council for Infants and Toddlers shall serve as the state interagency coordinating council required by 34 C.F.R. s. 303.600. The council shall be housed for administrative purposes in the department, and the department shall provide administrative support to the council.

(7) TRANSITION TO EDUCATION.—

(a) At least 90 days before a child reaches 3 years of age, the local program office shall initiate transition planning to ensure the child's successful transition from the Early Steps Program to a school district program for children with disabilities or to another program as part of an individual family support plan.

(b) At least 90 days before a child reaches 3 years of age, the local program office shall:

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1. Notify the local school district in which the child resides and the Department of Education that the child may be eligible for special education or related services as determined by the local school district pursuant to ss. 1003.21 and 1003.57, unless the child's parent or legal guardian has opted out of such notification; and

2. Upon approval by the child's parent or legal guardian, convene a transition conference that includes participation of a local school district representative and the parent or legal guardian to discuss options for and availability of services.

(c) The local school district shall evaluate and determine a child's eligibility to receive special education or related services pursuant to part B of the federal Individuals with Disabilities Education Act and ss. 1003.21 and 1003.57.

(d) The local program office, in conjunction with the local school district, shall modify a child's individual family support plan or, if applicable, the local school district shall develop an individual education plan for the child pursuant to ss. 1003.57, 1003.571, and 1003.5715, which identifies special education or related services that the child will receive and the providers or agencies that will provide such services.

(e) If a child is determined to be ineligible for school district program services, the local program office and the local school district shall provide the child's parent or legal guardian with written information on other available services or community resources.

(f) The local program office shall negotiate and maintain an interagency agreement with each local school district in its service area pursuant to the Individuals with Disabilities

Education Act, 20 U.S.C. s. 1435(a)(10)(F). Each interagency agreement must be reviewed at least annually and updated upon review, if needed.

Section 10. Subsection (15) of section 402.302, Florida Statutes, is amended to read:

402.302 Definitions.—As used in this chapter, the term:

(15) "Screening" means the act of assessing the background of child care personnel, in accordance with state and federal law, and volunteers and includes, but is not limited to:~~,~~

(a) Employment history checks, including documented attempts to contact each employer that employed the applicant within the preceding 5 years and documentation of the findings.

(b) A search of the criminal history records, sexual predator and sexual offender registry, and child abuse and neglect registry of any state in which the applicant resided during the preceding 5 years.

An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to ~~local criminal records checks through local law enforcement agencies, fingerprinting for all purposes and checks in this subsection, statewide criminal records checks through~~ the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to ~~federal criminal records checks through~~ the Federal Bureau of Investigation for national processing. Fingerprint submission must comply with s. 435.12.

Section 11. Section 402.3057, Florida Statutes, is

repealed.

Section 12. Subsection (3) of section 402.306, Florida Statutes, is amended to read:

402.306 Designation of licensing agency; dissemination by the department and local licensing agency of information on child care.—

(3) The department and local licensing agencies, or the designees thereof, shall be responsible for coordination and dissemination of information on child care to the community and shall make available through electronic means ~~upon request~~ all licensing standards and procedures, health and safety standards for school readiness providers, monitoring and inspection reports, and ~~in addition to~~ the names and addresses of licensed child care facilities, school readiness program providers, and, where applicable pursuant to s. 402.313, licensed or registered family day care homes. This information shall also include the number of deaths, serious injuries, and instances of substantiated child abuse that have occurred in child care settings each year; research and best practices in child development; and resources regarding social-emotional development, parent and family engagement, healthy eating, and physical activity.

Section 13. Section 402.311, Florida Statutes, is amended to read:

402.311 Inspection.—

(1) A licensed child care facility shall accord to the department or the local licensing agency, whichever is applicable, the privilege of inspection, including access to facilities and personnel and to those records required in s.

402.305, at reasonable times during regular business hours, to ensure compliance with ~~the provisions of~~ ss. 402.301-402.319. The right of entry and inspection shall also extend to any premises which the department or local licensing agency has reason to believe are being operated or maintained as a child care facility without a license, but no such entry or inspection of any premises shall be made without the permission of the person in charge thereof unless a warrant is first obtained from the circuit court authorizing such entry or inspection ~~same~~. Any application for a license or renewal made pursuant to this act or the advertisement to the public for the provision of child care as defined in s. 402.302 shall constitute permission for any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application. In the event a licensed facility refuses permission for entry or inspection to the department or local licensing agency, a warrant shall be obtained from the circuit court authorizing entry or inspection before ~~same prior to~~ such entry or inspection. The department or local licensing agency may institute disciplinary proceedings pursuant to s. 402.310~~,~~ for such refusal.

(2) A school readiness program provider shall accord to the department or the local licensing agency, whichever is applicable, the privilege of inspection, including access to facilities, personnel, and records, to verify compliance with the requirements of s. 1002.88. Entry, inspection, and issuance of an inspection report by the department or the local licensing agency to verify compliance with the requirements of s. 1002.88 is an exercise of a discretionary power to enforce compliance

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with the laws duly enacted by a governmental body.

(3) The department's issuance, transmittal, or publication of an inspection report resulting from an inspection under this section does not constitute agency action subject to chapter 120.

Section 14. Subsection (3) is added to section 402.319, Florida Statutes, to read:

402.319 Penalties.—

(3) Each child care facility, family day care home, and large family child care home shall annually submit an affidavit of compliance with s. 39.201.

Section 15. Paragraph (c) is added to subsection (4) of section 435.07, Florida Statutes, to read:

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

(4)

(c) Disqualification from employment under this chapter may not be removed from, and an exemption may not be granted to, any current or prospective child care personnel of a provider receiving school readiness funding under part VI of chapter 1002, and such a person is disqualified from employment as child care personnel with such providers, regardless of any prior exemptions from disqualification, if the person has been registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C) or has been arrested for and is awaiting final

disposition of, has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, or has been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or a similar law of another jurisdiction:

1. A felony offense prohibited under any of the following statutes:

a. Chapter 741, relating to domestic violence.

b. Section 782.04, relating to murder.

c. Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

d. Section 784.021, relating to aggravated assault.

e. Section 784.045, relating to aggravated battery.

f. Section 787.01, relating to kidnapping.

g. Section 787.025, relating to luring or enticing a child.

h. Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

i. Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

j. Section 794.011, relating to sexual battery.

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k. Former s. 794.041, relating to sexual activity with or solicitation of a child by a person in familial or custodial authority.

l. Section 794.05, relating to unlawful sexual activity with certain minors.

m. Section 794.08, relating to female genital mutilation.

n. Section 806.01, relating to arson.

o. Section 826.04, relating to incest.

p. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

q. Section 827.04, relating to contributing to the delinquency or dependency of a child.

r. Section 827.071, relating to sexual performance by a child.

s. Chapter 847, relating to child pornography.

t. Section 985.701, relating to sexual misconduct in juvenile justice programs.

2. A misdemeanor offense prohibited under any of the following statutes:

a. Section 784.03, relating to battery, if the victim of the offense was a minor.

b. Section 787.025, relating to luring or enticing a child.

c. Chapter 847, relating to child pornography.

3. A criminal act committed in another state or under federal law which, if committed in this state, constitutes an offense prohibited under any statute listed in subparagraph 1. or subparagraph 2.

Section 16. Paragraph (i) of subsection (2) of section 1002.82, Florida Statutes, is amended, and paragraphs (s)

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through (x) are added to that subsection, to read:

1002.82 Office of Early Learning; powers and duties.—

(2) The office shall:

(i) Enter into a memorandum of understanding with local licensing agencies and ~~Develop, in coordination with~~ the Child Care Services Program Office of the Department of Children and Families for inspections of school readiness program providers to monitor and verify compliance with s. 1002.88 and the health and safety checklist adopted by the office. The provider contract of a school readiness program provider that refuses permission for entry or inspection shall be terminated. The~~, and adopt a~~ health and safety checklist may ~~to be completed by license-exempt providers that does~~ not exceed the requirements of s. 402.305 and the Child Care and Development Fund pursuant to 45 C.F.R. part 98.

(s) Develop and implement strategies to increase the supply and improve the quality of child care services for infants and toddlers, children with disabilities, children who receive care during nontraditional hours, children in underserved areas, and children in areas that have significant concentrations of poverty and unemployment.

(t) Establish preservice and inservice training requirements that address, at a minimum, school readiness child development standards, health and safety requirements, and social-emotional behavior intervention models, which may include positive behavior intervention and support models.

(u) Establish standards for emergency preparedness plans for school readiness program providers.

(v) Establish group sizes.


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(w) Establish staff-to-children ratios that do not exceed the requirements of s. 402.302(8) or (11) or s. 402.305(4), as applicable, for school readiness program providers.

(x) Establish eligibility criteria, including limitations based on income and family assets, in accordance with s. 1002.87 and federal law.

Section 17. Subsections (7) and (8) of section 1002.84, Florida Statutes, are amended to read:

1002.84 Early learning coalitions; school readiness powers and duties.—Each early learning coalition shall:

(7) Determine child eligibility pursuant to s. 1002.87 and provider eligibility pursuant to s. 1002.88. ~~At a minimum,~~ Child eligibility must be redetermined annually. ~~Redetermination must also be conducted twice per year for an additional 50 percent of a coalition's enrollment through a statistically valid random sampling.~~ A coalition must document the reason ~~why~~ a child is no longer eligible for the school readiness program according to the standard codes prescribed by the office.

(8) Establish a parent sliding fee scale that provides for ~~requires~~ a parent copayment that is not a barrier to families receiving ~~to participate in the~~ school readiness program services. Providers are required to collect the parent's copayment. A coalition may, on a case-by-case basis, waive the copayment for an at-risk child or temporarily waive the copayment for a child whose family's income is at or below the federal poverty level and whose family experiences a natural disaster or an event that limits the parent's ability to pay, such as incarceration, placement in residential treatment, or becoming homeless, or an emergency situation such as a household

fire or burglary, or while the parent is participating in parenting classes. A parent may not transfer school readiness program services to another school readiness program provider until the parent has submitted documentation from the current school readiness program provider to the early learning coalition stating that the parent has satisfactorily fulfilled the copayment obligation.

Section 18. Subsections (1), (4), (5), and (6) of section 1002.87, Florida Statutes, are amended to read:

1002.87 School readiness program; eligibility and enrollment.—

(1) ~~Effective August 1, 2013, or upon reevaluation of eligibility for children currently served, whichever is later,~~ Each early learning coalition shall give priority for participation in the school readiness program as follows:

(a) Priority shall be given first to a child younger than 13 years of age from a family that includes a parent who is receiving temporary cash assistance under chapter 414 and subject to the federal work requirements.

(b) Priority shall be given next to an at-risk child younger than 9 years of age.

(c) Priority shall be given next to a child from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. who is from a working family that is economically disadvantaged, and may include such child's eligible siblings, beginning with the school year in which the sibling is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. until the beginning of the

school year in which the sibling is eligible to begin 6th grade, provided that the first priority for funding an eligible sibling is local revenues available to the coalition for funding direct services. ~~However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.~~

(d) Priority shall be given next to a child of a parent who transitions from the work program into employment as described in s. 445.032 from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(e) Priority shall be given next to an at-risk child who is at least 9 years of age but younger than 13 years of age. An at-risk child whose sibling is enrolled in the school readiness program within an eligibility priority category listed in paragraphs (a)-(c) shall be given priority over other children who are eligible under this paragraph.

(f) Priority shall be given next to a child who is younger than 13 years of age from a working family that is economically disadvantaged. A child who is eligible under this paragraph whose sibling is enrolled in the school readiness program under paragraph (c) shall be given priority over other children who are eligible under this paragraph. ~~However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.~~

(g) Priority shall be given next to a child of a parent who transitions from the work program into employment as described in s. 445.032 who is younger than 13 years of age.

(h) Priority shall be given next to a child who has special

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needs, has been determined eligible as a student with a disability, has a current individual education plan with a Florida school district, and is not younger than 3 years of age. A special needs child eligible under this paragraph remains eligible until the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(i) Notwithstanding paragraphs (a)-(d), priority shall be given last to a child who otherwise meets one of the eligibility criteria in paragraphs (a)-(d) but who is also enrolled concurrently in the federal Head Start Program and the Voluntary Prekindergarten Education Program.

(4) The parent of a child enrolled in the school readiness program must notify the coalition or its designee within 10 days after any change in employment status, income, or family size or failure to maintain attendance at a job training or educational program in accordance with program requirements. ~~Upon notification by the parent, the child's eligibility must be reevaluated.~~

(5) A child whose eligibility priority category requires the child to be from a working family ceases to be eligible for the school readiness program if a parent with whom the child resides does not reestablish employment or resume attendance at a job training or educational program within 90 ~~60~~ days after becoming unemployed or ceasing to attend a job training or educational program.

(6) Eligibility for each child must be reevaluated annually. Upon reevaluation, a child may not continue to receive school readiness program services if he or she has ceased to be eligible under this section. A child who is ineligible due to a


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parent's job loss or cessation of education or job training shall continue to receive school readiness program services for at least 3 months to enable the parent to obtain employment.

Section 19. Paragraphs (c), (d), and (e) of subsection (1) of section 1002.88, Florida Statutes, are amended to read:

1002.88 School readiness program provider standards; eligibility to deliver the school readiness program.—

(1) To be eligible to deliver the school readiness program, a school readiness program provider must:

(c) Provide basic health and safety of its premises and facilities and compliance with requirements for age-appropriate immunizations of children enrolled in the school readiness program.

1. For a provider that is licensed ~~child care facility, a large family child care home, or a licensed family day care home~~, compliance with s. 402.305, s. 402.3131, or s. 402.313 and this subsection, as verified pursuant to s. 402.311, satisfies this requirement.

2. For a provider that is a registered family day care home or is not subject to licensure or registration by the Department of Children and Families, compliance with this subsection, as verified pursuant to s. 402.311, satisfies this requirement. Upon verification pursuant to s. 402.311, the provider ~~For a public or nonpublic school, compliance with s. 402.3025 or s. 1003.22 satisfies this requirement. A faith-based child care provider, an informal child care provider, or a nonpublic school, exempt from licensure under s. 402.316 or s. 402.3025,~~ shall annually post ~~complete~~ the health and safety checklist adopted by the office~~, post the checklist~~ prominently on its


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premises in plain sight for visitors and parents~~,~~ and shall annually submit the checklist ~~it annually~~ to its local early learning coalition.

(d) Provide an appropriate group size and staff-to-children ratio~~, pursuant to s. 402.305(4) or s. 402.302(8) or (11), as applicable, and as verified pursuant to s. 402.311~~.

(e) Employ child care personnel, as defined in s. 402.302(3), who have satisfied the screening requirements of chapter 402 and fulfilled the training requirements of the office ~~Provide a healthy and safe environment pursuant to s. 402.305(5), (6), and (7), as applicable, and as verified pursuant to s. 402.311~~.

Section 20. Subsections (6) and (7) of section 1002.89, Florida Statutes, are amended to read:

1002.89 School readiness program; funding.—

(6) Costs shall be kept to the minimum necessary for the efficient and effective administration of the school readiness program with the highest priority of expenditure being direct services for eligible children. However, no more than 5 percent of the funds described in subsection (5) may be used for administrative costs and no more than 22 percent of the funds described in subsection (5) may be used in any fiscal year for any combination of administrative costs, quality activities, and nondirect services as follows:

(a) Administrative costs as described in 45 C.F.R. s. 98.52, which shall include monitoring providers using the standard methodology adopted under s. 1002.82 to improve compliance with state and federal regulations and law pursuant to the requirements of the statewide provider contract adopted

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under s. 1002.82(2)(m).

(b) Activities to improve the quality of child care as described in 45 C.F.R. s. 98.51, which shall be limited to the following:

1. Developing, establishing, expanding, operating, and coordinating resource and referral programs specifically related to the provision of comprehensive consumer education to parents and the public to promote informed child care choices specified in 45 C.F.R. s. 98.33 ~~regarding participation in the school readiness program and parental choice~~.

2. Awarding grants and providing financial support to school readiness program providers and their staff to assist them in meeting applicable state requirements for child care performance standards, implementing developmentally appropriate curricula and related classroom resources that support curricula, providing literacy supports, and providing continued professional development and training. Any grants awarded pursuant to this subparagraph shall comply with ~~the requirements of~~ ss. 215.971 and 287.058.

3. Providing training, ~~and~~ technical assistance, and financial support to ~~for~~ school readiness program providers, staff, and parents on standards, child screenings, child assessments, child development research and best practices, developmentally appropriate curricula, character development, teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid, cardiopulmonary resuscitation, the recognition of communicable diseases, and child abuse detection, ~~and~~ prevention, and reporting.

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4. Providing, from among the funds provided for the activities described in subparagraphs 1.-3., adequate funding for infants and toddlers as necessary to meet federal requirements related to expenditures for quality activities for infant and toddler care.

5. Improving the monitoring of compliance with, and enforcement of, applicable state and local requirements as described in and limited by 45 C.F.R. s. 98.40.

6. Responding to Warm-Line requests by providers and parents ~~related to school readiness program children~~, including providing developmental and health screenings to school readiness program children.

(c) Nondirect services as described in applicable Office of Management and Budget instructions are those services not defined as administrative, direct, or quality services that are required to administer the school readiness program. Such services include, but are not limited to:

1. Assisting families to complete the required application and eligibility documentation.

2. Determining child and family eligibility.

3. Recruiting eligible child care providers.

4. Processing and tracking attendance records.

5. Developing and maintaining a statewide child care information system.

As used in this paragraph, the term "nondirect services" does not include payments to school readiness program providers for direct services provided to children who are eligible under s. 1002.87, administrative costs as described in paragraph (a), or

quality activities as described in paragraph (b).

(7) Funds appropriated for the school readiness program may not be expended for the purchase or improvement of land; for the purchase, construction, or permanent improvement of any building or facility; or for the purchase of buses. However, funds may be expended for minor remodeling and upgrading of child care facilities which is necessary for the administration of the program and to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

Section 21. Paragraph (c) of subsection (2) of section 402.3025, Florida Statutes, is amended to read:

402.3025 Public and nonpublic schools.—For the purposes of ss. 402.301-402.319, the following shall apply:

(2) NONPUBLIC SCHOOLS.—

(c) Programs for children who are at least 3 years of age, but under 5 years of age, shall not be deemed to be child care and shall not be subject to the provisions of ss. 402.301-402.319 relating to child care facilities, provided the programs in the schools are operated and staffed directly by the schools, provided a majority of the children enrolled in the schools are 5 years of age or older, and provided there is compliance with the screening requirements for personnel pursuant to s. 402.305 ~~or s. 402.3057~~. A nonpublic school may designate certain programs as child care, in which case these programs shall be subject to the provisions of ss. 402.301-402.319.

Section 22. Subsections (1) and (2) of section 413.092, Florida Statutes, are amended to read:

413.092 Blind Babies Program.—

(1) The Blind Babies Program is created within the Division of Blind Services of the Department of Education to provide community-based early-intervention education to children from birth through 5 years of age who are blind or visually impaired, and to their parents, families, and caregivers, through community-based provider organizations. The division shall enlist parents, ophthalmologists, pediatricians, schools, the Early Steps Program ~~Infant and Toddlers Early Intervention Programs~~, and therapists to help identify and enroll blind and visually impaired children, as well as their parents, families, and caregivers, in these educational programs.

(2) The program is not an entitlement but shall promote early development with a special emphasis on vision skills to minimize developmental delays. The education shall lay the groundwork for future learning by helping a child progress through normal developmental stages. It shall teach children to discover and make the best use of their skills for future success in school. It shall seek to ensure that visually impaired and blind children enter school as ready to learn as their sighted classmates. The program shall seek to link these children, and their parents, families, and caregivers, to other available services, training, education, and employment programs that could assist these families in the future. This linkage may include referrals to the school districts and the Early Steps ~~Infants and Toddlers Early Intervention~~ Program for assessments to identify any additional services needed which are not provided by the Blind Babies Program. The division shall develop a formula for eligibility based on financial means and may create a means-based matrix to set a copayment fee for families

having sufficient financial means.

Section 23. Subsection (1) of section 1003.575, Florida Statutes, is amended to read:

1003.575 Assistive technology devices; findings; interagency agreements.—Accessibility, utilization, and coordination of appropriate assistive technology devices and services are essential as a young person with disabilities moves from early intervention to preschool, from preschool to school, from one school to another, and from school to employment or independent living. If an individual education plan team makes a recommendation in accordance with State Board of Education rule for a student with a disability, as defined in s. 1003.01(3), to receive an assistive technology assessment, that assessment must be completed within 60 school days after the team's recommendation. To ensure that an assistive technology device issued to a young person as part of his or her individualized family support plan, individual support plan, or an individual education plan remains with the individual through such transitions, the following agencies shall enter into interagency agreements, as appropriate, to ensure the transaction of assistive technology devices:

(1) The Early Steps ~~Florida Infants and Toddlers Early Intervention~~ Program in the Division of Children's Medical Services of the Department of Health.

Interagency agreements entered into pursuant to this section shall provide a framework for ensuring that young persons with disabilities and their families, educators, and employers are informed about the utilization and coordination of assistive

technology devices and services that may assist in meeting transition needs, and shall establish a mechanism by which a young person or his or her parent may request that an assistive technology device remain with the young person as he or she moves through the continuum from home to school to postschool.

Section 24. This act shall take effect July 1, 2016.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to early childhood development; amending s. 39.201, F.S.; providing an exception from a prohibition against the use of information in the Department of Children and Families central abuse hotline for employment screening of certain child care personnel; amending s. 39.202, F.S.; expanding the list of entities that have access to child abuse records for purposes of approving providers of school readiness services; amending s. 383.141, F.S.; revising the requirements for the Department of Health to maintain a clearinghouse of information for parents and health care providers and to increase public awareness of developmental evaluation and early intervention programs; requiring the clearinghouse to use a specified term; revising the information to be included in the clearinghouse; amending s. 391.025, F.S.; renaming the "Infants and Toddlers Early


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Intervention Program" as the "Early Steps Program"; revising the components of the Children's Medical Services program; amending s. 391.026, F.S.; requiring the department to serve as the lead agency in administering the Early Steps Program; amending s. 391.301, F.S.; establishing the Early Steps Program within the department; deleting provisions relating to legislative findings; authorizing the program to include certain screening and referral services for specified purposes; providing requirements and responsibilities for the program; amending s. 391.302, F.S.; defining terms; revising the definitions of certain terms; deleting terms; repealing ss. 391.303, 391.304, 391.305, 391.306, and 391.307, F.S., relating to requirements for the Children's Medical Services program, program coordination, program standards, program funding and contracts, and program review, respectively; amending s. 391.308, F.S.; renaming the "Infants and Toddlers Early Intervention Program" as the "Early Steps Program"; requiring, rather than authorizing, the department to implement and administer the program; requiring the department to ensure that the program follows specified performance standards; providing requirements of the program to meet such performance standards; revising the duties of the department; requiring the department to apply specified eligibility criteria for the program based on an appropriation of funds; providing duties for local program offices; requiring the local program

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office to negotiate and maintain agreements with specified providers and managed care organizations; requiring the development of an individualized family support plan for each child served in the program; requiring the local program office to coordinate with managed care organizations; requiring the department to submit an annual report, subject to certain requirements, to the Governor, the Legislature, and the Florida Interagency Coordinating Council for Infants and Toddlers by a specified date; designating the Florida Interagency Coordinating Council for Infants and Toddlers as the state interagency coordinating council required by federal rule subject to certain requirements; providing requirements for the local program office and local school district to prepare certain children for the transition to school under certain circumstances; amending s. 402.302, F.S.; revising the definition of the term “screening” for purposes of child care licensing requirements; repealing s. 402.3057, F.S., relating to persons not required to be refingerprinted or rescreened; amending s. 402.306, F.S.; requiring the Department of Children and Families and local licensing agencies to electronically post certain information relating to child care and school readiness providers; amending s. 402.311, F.S.; requiring school readiness program providers to provide the department or local licensing agencies with access to facilities, personnel, and records for inspection purposes; amending s. 402.319,


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F.S.; requiring certain child care providers to submit an affidavit of compliance with certain mandatory reporting requirements; amending s. 435.07, F.S.; providing criteria for disqualification from employment with a school readiness program provider; amending s. 1002.82, F.S.; revising the duties of the Office of Early Learning of the Department of Education; requiring the office to coordinate with the Department of Children and Families and local licensing agencies for inspections of school readiness program providers; amending s. 1002.84, F.S.; revising provisions relating to determination of child eligibility for school readiness programs; revising requirements for determining parent copayments for participation in the program; amending s. 1002.87, F.S.; revising school readiness program eligibility requirements; amending s. 1002.88, F.S.; revising requirements for school readiness program providers; amending s. 1002.89, F.S.; providing for additional uses of funds for school readiness programs; amending ss. 402.3025, 413.092, and 1003.575, F.S.; conforming provisions to changes made by the act; providing an effective date.

By the Committee on Education Pre-K - 12

581-02943-16 20167058__

A bill to be entitled

An act relating to the Child Care and Development Block Grant Program; amending s. 39.201, F.S.; providing an exception from a prohibition against the use of information in the Department of Children and Families central abuse hotline for employment screening of certain child care personnel; amending s. 39.202, F.S.; expanding the list of entities that have access to child abuse records for purposes of approving providers of school readiness services; amending s. 402.302, F.S.; revising the definition of the term "screening" for purposes of child care licensing requirements; amending s. 402.3057, F.S.; clarifying individuals who are exempt from certain refingerprinting or rescreening requirements; amending s. 402.306, F.S.; requiring the Department of Children and Families and local licensing agencies to electronically post certain information relating to child care and school readiness providers; amending s. 402.311, F.S.; requiring school readiness program providers to provide the Department of Children and Families or local licensing agencies with access to facilities, personnel, and records for inspection purposes; amending s. 402.319, F.S.; requiring certain child care providers to submit an affidavit of compliance with certain mandatory reporting requirements; amending s. 409.1757, F.S.; clarifying individuals who are exempt from certain refingerprinting or rescreening requirements; amending s. 435.07, F.S.; prohibiting removal or exemption from disqualification from employment for any school readiness provider personnel if registered as a sex

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offender or convicted of specified crimes; amending s. 1002.82, F.S.; revising the duties of the Office of Early Learning of the Department of Education; requiring the office to coordinate with the Department of Children and Families and local licensing agencies for inspections of school readiness program providers; amending s. 1002.84, F.S.; revising provisions relating to determination of child eligibility for school readiness programs; revising requirements for determining parent copayments for the programs; amending s. 1002.87, F.S.; revising the prioritization of participation in school readiness programs; revising school readiness program eligibility requirements for parents; amending s. 1002.88, F.S.; revising requirements for school readiness program providers; amending s. 1002.89, F.S.; providing for additional uses of funds for school readiness programs; providing an effective date.

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

Section 1. Subsection (6) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h) or s. 402.302(15). Information in the central abuse hotline and the department's automated abuse

information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

Section 2. Paragraph (a) of subsection (2) of section 39.202, Florida Statutes, is amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, or county agencies responsible for carrying out:

1. Child or adult protective investigations;

2. Ongoing child or adult protective services;

3. Early intervention and prevention services;

4. Healthy Start services;

5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, ~~or~~ family day care homes, ~~or informal child care~~ providers who receive school readiness funding under part VI of chapter 1002, or other homes used to provide for the care and welfare of children; or

6. Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

Section 3. Subsection (15) of section 402.302, Florida Statutes, is amended to read:

402.302 Definitions.—As used in this chapter, the term:

(15) "Screening" means the act of assessing the background of child care personnel, in accordance with state and federal law, and volunteers and includes, but is not limited to:~~,~~

(a) Employment history checks, including documented attempts to contact each employer that employed the applicant within the preceding 5 years and documentation of the findings.

(b) A search of the criminal history records, sexual predator and sexual offender registry, and child abuse and neglect registry of any state in which the applicant resided during the preceding 5 years.

An applicant must submit a full set of fingerprints to the department or to a vendor, an entity, or an agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to ~~local criminal records checks through local law enforcement agencies, fingerprinting for all purposes and checks in this subsection, statewide criminal records checks through~~ the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to~~, and federal criminal records checks through~~ the Federal Bureau of Investigation for national processing.

Section 4. Section 402.3057, Florida Statutes, is amended to read:

402.3057 Individuals ~~Persons~~ not required to be refingerprinted or rescreened.—Individuals ~~Any provision of law to the contrary notwithstanding, human resource personnel~~ who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, ~~and teachers and noninstructional personnel who have been fingerprinted pursuant to chapter 1012,~~ who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for good moral character as contained in such provisions as ss. 110.1127(2)(c), 393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6), are ~~shall~~ not ~~be~~ required to be refingerprinted or rescreened in order to comply with any ~~caretaker~~ screening or fingerprinting requirements of this chapter.

Section 5. Subsection (3) of section 402.306, Florida Statutes, is amended to read:

402.306 Designation of licensing agency; dissemination by the department and local licensing agency of information on child care.—

(3) The department and local licensing agencies, or the designees thereof, shall be responsible for coordination and dissemination of information on child care to the community and shall make available through electronic means ~~upon request~~ all licensing standards and procedures, health and safety standards for school readiness providers, monitoring and inspection reports, and ~~in addition to~~ the names and addresses of licensed

child care facilities, school readiness program providers, and, where applicable pursuant to s. 402.313, licensed or registered family day care homes. This information must also include the number of deaths, serious injuries, and instances of substantiated child abuse which have occurred in child care settings each year; research and best practices in child development; and resources regarding social-emotional development, parent and family engagement, healthy eating, and physical activity.

Section 6. Section 402.311, Florida Statutes, is amended to read:

402.311 Inspection.—

(1) A licensed child care facility shall accord to the department or the local licensing agency, whichever is applicable, the privilege of inspection, including access to facilities and personnel and to those records required in s. 402.305, at reasonable times during regular business hours, to ensure compliance with ~~the provisions of~~ ss. 402.301-402.319. The right of entry and inspection shall also extend to any premises which the department or local licensing agency has reason to believe are being operated or maintained as a child care facility without a license, but no such entry or inspection of any premises shall be made without the permission of the person in charge thereof unless a warrant is first obtained from the circuit court authorizing such entry or inspection ~~same~~. Any application for a license or renewal made pursuant to this act or the advertisement to the public for the provision of child care as defined in s. 402.302 shall constitute permission for any entry or inspection of the premises for which the license is

sought in order to facilitate verification of the information submitted on or in connection with the application. In the event a licensed facility refuses permission for entry or inspection to the department or local licensing agency, a warrant shall be obtained from the circuit court authorizing entry or inspection before ~~same prior to~~ such entry or inspection. The department or local licensing agency may institute disciplinary proceedings pursuant to s. 402.310~~,~~ for such refusal.

(2) A school readiness program provider shall accord to the department or the local licensing agency, whichever is applicable, the privilege of inspection, including access to facilities, personnel, and records, to verify compliance with s. 1002.88. Entry, inspection, and issuance of an inspection report by the department or the local licensing agency to verify compliance with s. 1002.88 is an exercise of a discretionary power to enforce compliance with the laws duly enacted by a governmental body.

(3) The department's issuance, transmittal, or publication of an inspection report resulting from an inspection under this section does not constitute agency action subject to chapter 120.

Section 7. Subsection (3) is added to section 402.319, Florida Statutes, to read:

402.319 Penalties.—

(3) Each child care facility, family day care home, and large family child care home shall annually submit an affidavit of compliance with s. 39.201.

Section 8. Section 409.1757, Florida Statutes, is amended to read:

409.1757 Individuals ~~Persons~~ not required to be refingerprinted or rescreened.—Individuals ~~Any law to the contrary notwithstanding, human resource personnel~~ who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and this chapter, teachers who have been fingerprinted pursuant to chapter 1012, and law enforcement officers who meet the requirements of s. 943.13, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with this section and the standards for good moral character as contained in such provisions as ss. 110.1127(2)(c), 393.0655(1), 394.457(6), 397.451, 402.305(2), 409.175(6), and 943.13(7), are not required to be refingerprinted or rescreened in order to comply with any ~~caretaker~~ screening or fingerprinting requirements of this chapter.

Section 9. Paragraph (c) is added to subsection (4) of section 435.07, Florida Statutes, to read:

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

(4)

(c) Disqualification from employment under this chapter may not be removed from, nor may an exemption be granted to, any current or prospective personnel of a provider receiving school readiness funding under part VI of chapter 1002, if such person

is registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C) or has been convicted of crimes referenced in 42 U.S.C. s. 9858f. Such persons are disqualified from employment with a school readiness provider regardless of any prior exemptions from disqualification. Any person employed by a school readiness provider on July 1, 2016, who has been granted an exemption from disqualification must be rescreened no later than August 1, 2016.

Section 10. Paragraph (i) of subsection (2) of section 1002.82, Florida Statutes, is amended, and paragraphs (s) through (x) are added to that subsection, to read:

1002.82 Office of Early Learning; powers and duties.—

(2) The office shall:

(i) Enter into a memorandum of understanding with local licensing agencies and ~~Develop, in coordination with~~ the Child Care Services Program Office of the Department of Children and Families for inspections of school readiness program providers to monitor and verify compliance with s. 1002.88 and the health and safety checklist adopted by the office. The provider contract of a school readiness program provider that refuses permission for entry or inspection shall be terminated. The~~, and adopt a~~ health and safety checklist may ~~to be completed by license-exempt providers that does~~ not exceed the requirements of s. 402.305 and the Child Care and Development Fund pursuant to 45 C.F.R. part 98.

(s) Develop and implement strategies to increase the supply and improve the quality of child care services for infants and toddlers, children with disabilities, children who receive care during nontraditional hours, children in underserved areas, and

children in areas that have significant concentrations of poverty and unemployment.

(t) Establish preservice and inservice training requirements that address, at a minimum, school readiness child development standards, health and safety requirements, and social-emotional behavior intervention models, which may include positive behavior intervention and support models.

(u) Establish standards for emergency preparedness plans for school readiness program providers.

(v) Establish group sizes.

(w) Establish staff-to-children ratios that do not exceed the requirements of s. 402.302(8) or (11) or s. 402.305(4), as applicable, for school readiness program providers.

(x) Establish eligibility criteria, including limitations based on income and family assets, in accordance with s. 1002.87 and federal law.

Section 11. Subsections (7) and (8) of section 1002.84, Florida Statutes, are amended to read:

1002.84 Early learning coalitions; school readiness powers and duties.—Each early learning coalition shall:

(7) Determine child eligibility pursuant to s. 1002.87 and provider eligibility pursuant to s. 1002.88. ~~At a minimum,~~ Child eligibility must be redetermined annually. ~~Redetermination must also be conducted twice per year for an additional 50 percent of a coalition's enrollment through a statistically valid random sampling.~~ A coalition must document the reason ~~why~~ a child is no longer eligible for the school readiness program according to the standard codes prescribed by the office.

(8) Establish a parent sliding fee scale that provides for

~~requires~~ a parent copayment that is not a barrier to families receiving ~~to participate in the~~ school readiness program services. Providers are required to collect the parent's copayment. A coalition may, on a case-by-case basis, waive the copayment for an at-risk child or temporarily waive the copayment for a child whose family's income is at or below the federal poverty level and whose family experiences a natural disaster or an event that limits the parent's ability to pay, such as incarceration, placement in residential treatment, or becoming homeless, or an emergency situation such as a household fire or burglary, or while the parent is participating in parenting classes. A parent may not transfer school readiness program services to another school readiness program provider until the parent has submitted documentation from the current school readiness program provider to the early learning coalition stating that the parent has satisfactorily fulfilled the copayment obligation.

Section 12. Subsections (1), (4), (5), and (6) of section 1002.87, Florida Statutes, are amended to read:

1002.87 School readiness program; eligibility and enrollment.—

(1) ~~Effective August 1, 2013, or upon reevaluation of eligibility for children currently served, whichever is later,~~ Each early learning coalition shall give priority for participation in the school readiness program as follows:

(a) Priority shall be given first to a child younger than 13 years of age from a family that includes a parent who is receiving temporary cash assistance under chapter 414 and subject to the federal work requirements.

(b) Priority shall be given next to an at-risk child younger than 9 years of age.

(c) Priority shall be given next to a child from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. who is from a working family that is economically disadvantaged, and may include such child's eligible siblings, beginning with the school year in which the sibling is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2. until the beginning of the school year in which the sibling is eligible to begin 6th grade, provided that the first priority for funding an eligible sibling is local revenues available to the coalition for funding direct services. ~~However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.~~

(d) Priority shall be given next to a child of a parent who transitions from the work program into employment as described in s. 445.032 from birth to the beginning of the school year for which the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(e) Priority shall be given next to an at-risk child who is at least 9 years of age but younger than 13 years of age. An at-risk child whose sibling is enrolled in the school readiness program within an eligibility priority category listed in paragraphs (a)-(c) shall be given priority over other children who are eligible under this paragraph.

(f) Priority shall be given next to a child who is younger than 13 years of age from a working family that is economically

disadvantaged. A child who is eligible under this paragraph whose sibling is enrolled in the school readiness program under paragraph (c) shall be given priority over other children who are eligible under this paragraph. ~~However, a child eligible under this paragraph ceases to be eligible if his or her family income exceeds 200 percent of the federal poverty level.~~

(g) Priority shall be given next to a child of a parent who transitions from the work program into employment as described in s. 445.032 who is younger than 13 years of age.

(h) Priority shall be given next to a child who has special needs, has been determined eligible as a student with a disability, has a current individual education plan with a Florida school district, and is not younger than 3 years of age. A special needs child eligible under this paragraph remains eligible until the child is eligible for admission to kindergarten in a public school under s. 1003.21(1)(a)2.

(i) Notwithstanding paragraphs (a)-(d), priority shall be given last to a child who otherwise meets one of the eligibility criteria in paragraphs (a)-(d) but who is also enrolled concurrently in the federal Head Start Program and the Voluntary Prekindergarten Education Program.

(4) The parent of a child enrolled in the school readiness program must notify the coalition or its designee within 10 days after any change in employment status, income, or family size or failure to maintain attendance at a job training or educational program in accordance with program requirements. ~~Upon notification by the parent, the child's eligibility must be reevaluated.~~

(5) A child whose eligibility priority category requires

the child to be from a working family ceases to be eligible for the school readiness program if a parent with whom the child resides does not reestablish employment or resume attendance at a job training or educational program within 90 ~~60~~ days after becoming unemployed or ceasing to attend a job training or educational program.

(6) Eligibility for each child must be reevaluated annually. Upon reevaluation, a child may not continue to receive school readiness program services if he or she has ceased to be eligible under this section. A child who is ineligible due to a parent's job loss or cessation of job training or education shall continue to receive school readiness program services for at least 3 months to enable the parent to obtain employment.

Section 13. Paragraphs (c), (d), and (e) of subsection (1) of section 1002.88, Florida Statutes, are amended to read:

1002.88 School readiness program provider standards; eligibility to deliver the school readiness program.—

(1) To be eligible to deliver the school readiness program, a school readiness program provider must:

(c) Provide basic health and safety of its premises and facilities and compliance with requirements for age-appropriate immunizations of children enrolled in the school readiness program.

1. For a provider that is licensed ~~child care facility, a large family child care home, or a licensed family day care home~~, compliance with s. 402.305, s. 402.3131, or s. 402.313 and this subsection, as verified pursuant to s. 402.311, satisfies this requirement.

2. For a provider that is a registered family day care home

or is not subject to licensure or registration by the Department of Children and Families, compliance with this subsection, as verified pursuant to s. 402.311, satisfies this requirement. Upon such verification, the provider ~~For a public or nonpublic school, compliance with s. 402.3025 or s. 1003.22 satisfies this requirement. A faith-based child care provider, an informal child care provider, or a nonpublic school, exempt from licensure under s. 402.316 or s. 402.3025,~~ shall annually post ~~complete~~ the health and safety checklist adopted by the office~~, post the checklist~~ prominently on its premises in plain sight for visitors and parents~~,~~ and shall annually submit the checklist ~~it annually~~ to its local early learning coalition.

(d) Provide an appropriate group size and staff-to-children ratio~~, pursuant to s. 402.305(4) or s. 402.302(8) or (11), as applicable, and as verified pursuant to s. 402.311~~.

(e) Employ child care personnel, as defined in s. 402.302(3), who have satisfied the screening requirements of chapter 402 and fulfilled the training requirements of the office ~~Provide a healthy and safe environment pursuant to s. 402.305(5), (6), and (7), as applicable, and as verified pursuant to s. 402.311~~.

Section 14. Paragraph (b) of subsection (6) and subsection (7) of section 1002.89, Florida Statutes, are amended to read:

1002.89 School readiness program; funding.—

(6) Costs shall be kept to the minimum necessary for the efficient and effective administration of the school readiness program with the highest priority of expenditure being direct services for eligible children. However, no more than 5 percent of the funds described in subsection (5) may be used for

administrative costs and no more than 22 percent of the funds described in subsection (5) may be used in any fiscal year for any combination of administrative costs, quality activities, and nondirect services as follows:

(b) Activities to improve the quality of child care as described in 45 C.F.R. s. 98.51, which must ~~shall~~ be limited to the following:

1. Developing, establishing, expanding, operating, and coordinating resource and referral programs specifically related to the provision of comprehensive consumer education to parents and the public to promote informed child care choices specified in 45 C.F.R. s. 98.33 ~~regarding participation in the school readiness program and parental choice~~.

2. Awarding grants and providing financial support to school readiness program providers and their staff to assist them in meeting applicable state requirements for child care performance standards, implementing developmentally appropriate curricula and related classroom resources that support curricula, providing literacy supports, and providing continued professional development and training. Any grants awarded pursuant to this subparagraph shall comply with ~~the requirements of~~ ss. 215.971 and 287.058.

3. Providing training, ~~and~~ technical assistance, and financial support to ~~for~~ school readiness program providers and their~~,~~ staff~~,~~ and parents on standards, child screenings, child assessments, child development research and best practices, developmentally appropriate curricula, character development, teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid,

cardiopulmonary resuscitation, the recognition of communicable diseases, and child abuse detection, ~~and~~ prevention, and reporting.

4. Providing, from among the funds provided for the activities described in subparagraphs 1.-3., adequate funding for infants and toddlers as necessary to meet federal requirements related to expenditures for quality activities for infant and toddler care.

5. Improving the monitoring of compliance with, and enforcement of, applicable state and local requirements as described in and limited by 45 C.F.R. s. 98.40.

6. Responding to Warm-Line requests by providers and parents ~~related to school readiness program children~~, including providing developmental and health screenings to school readiness program children.

(7) Funds appropriated for the school readiness program may not be expended for the purchase or improvement of land; for the purchase, construction, or permanent improvement of any building or facility; or for the purchase of buses. However, funds may be expended for minor remodeling and upgrading of child care facilities which is necessary for the administration of the program and to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

Section 15. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

7058
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic CCDBG

Name JESSICA SCHER

Job Title Director, Public Policy

Address 3250 SW 3rd Ave
Street

Phone 305 322 6143

Miami FL 33129
City State Zip

Email scher@unitedway-miami.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing United Way of Miami-Dade

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER
Democratic Leader
19th District

February 17, 2016

Senator Tom Lee, Chair
Committee on Appropriations
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Lee:

This letter is to request that I be excused from the Committee on Appropriations meeting on February 18, 2016. Thank you for your consideration.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

REPLY TO:
☐ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
☐ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JEREMY RING
29th District

February 15, 2016

Senator Tom Lee
418 Senate Office Building
Tallahassee, FL 32399-100

Dear Senator Lee,

I am requesting to be excused from the Appropriations meeting scheduled for February 18th due to a trip to visit my son in Idaho. .

Thank you in advance for considering this request to be excused from the Children Familes and Elder Affairs meeting scheduled for February 18th due to this conflict. Please do not hesitate to contact me if you have any questions.

Sincerely,

Jeremy Ring

Jeremy Ring
Senator District 29

REPLY TO:
☐ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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Banking and Insurance
Environmental Preservation and Conservation
Ethics and Elections

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight, *Alternating Chair*

SENATOR CHRISTOPHER L. SMITH
31st District

February 17, 2016

The Honorable Senator Tom Lee, Chair
Appropriations
418 Senate Office Building
404 S Monroe Street
Tallahassee FL 32399

Dear Chairman Lee:

I respectfully ask, to be excuses from the Appropriations Committee meeting that is scheduled for Thursday February 18, 2016 at 1:00 p.m. I will be traveling to Washington D.C. on Thursday morning to attend meetings.

Thank you in advance for your consideration.

Sincerely,

Senator Christopher L. Smith, District 31

Cc: Appropriations. The Capitol 201

REPLY TO:
☐ 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (954) 321-2707
☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: KN 412 **Case No.:** **Type:**
Caption: Senate Appropriations Committee **Judge:**

Started: 2/18/2016 1:07:48 PM
Ends: 2/18/2016 2:37:50 PM **Length: 01:30:03**

1:07:57 PM Sen. Lee (Chair)
1:08:02 PM S 580
1:08:40 PM Sen. Grimsley
1:08:47 PM Joe Anne Hart, Director of Governmental Affairs, Florida Dental Association (waives in support)
1:09:49 PM S 676
1:09:53 PM Sen. Grimsley
1:11:04 PM Am. 243646
1:11:14 PM Sen. Grimsley
1:11:54 PM Jon Johnson, Consultant, (waives in support)
1:11:57 PM Allison Carvajal, Consultant, Florida Nurse Practitioner Network (waives in support)
1:12:07 PM Martha DeCastro, Vice President for Nursing, Florida Hospital Association (waives in support)
1:12:10 PM Am. 243646 (cont.)
1:12:24 PM S 676 (cont.)
1:12:29 PM Barbara Lumpkin, Consultant, Baptist Health South Florida
1:13:55 PM A. Carvajal (waives in support)
1:13:57 PM M. DeCastro (waives in support)
1:14:07 PM Stephen R. Winn, Executive Director, Florida Osteopathic Medical Association (waives in support)
1:14:09 PM Jeff Scott, Florida Medical Association (waives in support)
1:14:11 PM Ron Watson, Lobbyist, Florida CHAIN (waives in support)
1:14:15 PM Melody Arnold, Governmental Affairs Manager, Florida Healthcare Association (waives in support)
1:14:23 PM Chris Floyd, Consultant, Florida Association of Nurse Practioners (waives in support)
1:14:25 PM Susan Salahshor, Lead Physician Assistant Abdominal Transplant, Florida Academy of Physician Assistant (waives in support)
1:15:27 PM S 1176
1:15:35 PM Sen. Diaz de la Portilla
1:17:04 PM S 806
1:17:10 PM Sen. Legg
1:17:50 PM Amy Maquire, Vice President, Government, Community, and Corporate Relations, All Childrens Hospital John Hopkins Medicine (waives in support)
1:18:48 PM S 834
1:18:53 PM Sen. Detert
1:19:45 PM Tanya Cooper, Director of Governmental Relations, Department of Education (waives in support)
1:20:33 PM S 894
1:20:37 PM Sen. Detert
1:22:19 PM Am. 237190
1:22:25 PM Sen. Detert
1:22:50 PM T. Cooper (waives in support)
1:22:51 PM S 894 (cont.)
1:23:46 PM S 7058
1:23:47 PM Sen. Legg
1:23:55 PM Am. 447038
1:23:57 PM Sen. Legg
1:24:51 PM S 7058 (cont.)
1:24:55 PM Jessica Scher, Director of Public Policy, United Way of Miami-Dade (waives in support)
1:25:50 PM S 708
1:26:15 PM PCS 726460
1:26:20 PM Sen. Braynon
1:28:00 PM Sen. Gaetz
1:28:39 PM Sen. Braynon
1:28:50 PM Sen. Gaetz
1:28:58 PM Sen. Braynon
1:29:06 PM Sen. Gaetz

1:29:35 PM Sen. Braynon
1:29:49 PM Sen. Gaetz
1:30:35 PM Am. 482384
1:30:37 PM Sen. Braynon
1:30:47 PM Sen. Gaetz
1:31:12 PM Sen. Braynon
1:31:37 PM S 708 (cont.)
1:32:31 PM S 122
1:32:36 PM Sen. Bradley
1:34:28 PM Barney Bishop III, Innocence Project of Florida (waives in support)
1:35:06 PM Sen. Bradley
1:35:48 PM S 1426
1:35:52 PM Sen. Stargel
1:36:21 PM Debbie Mortham, Advocacy Director, Foundation for Florida's Future (waives in support)
1:36:30 PM Andrea Messina, Executive Director, Florida School Boards Association (waives in support)
1:36:36 PM Sandra Maldonado-Ross, Teacher, students with special needs (waives in support)
1:37:28 PM S 12
1:37:29 PM Sen. Garcia
1:37:40 PM PCS 821992
1:37:44 PM Sen. Garcia
1:39:27 PM Am. 654058
1:39:36 PM Dan Hendrickson, Chair Advocacy Committee, Big Bend Mental Health Coalition, National Alliance on Mental Illness Tallahassee (waives in support)
1:39:42 PM Corinne Mixon, Lobbyist, Florida Mental Health Counselors Association (waives in support)
1:39:52 PM S 12 (cont.)
1:39:56 PM Judge Steven Leifman, Chair, Supreme Court Task Force on Substance Abuse & Mental Health Issues in the Courts
1:41:27 PM Ron Watson, Lobbyist, Florida Mental Health Counselors Association (waives in support)
1:41:36 PM Mark Fontaine, Executive Director, Florida Alcohol & Drug Abuse Association (waives in support)
1:41:45 PM Natalie Kelly, Executive Director, Florida Association of Managing Entities (waives in support)
1:41:50 PM Barney Bishop III, President & Chief Executive Officer, Florida Smart Justice Alliance (waives in support)
1:41:51 PM Melanie Brown Woofter, Senior Medicaid Policy Director, Florida Council Community Mental Health (waives in support)
1:42:00 PM Laura Youmans, Florida Association of Counties (waives in support)
1:42:04 PM Thad Lowrey, Vice President Governmental Relations, Operation PAR (waives in support)
1:42:15 PM Sen. Garcia
1:44:00 PM S 684
1:44:16 PM PCS 434300
1:44:21 PM Sen. Gaetz
1:44:57 PM Natalie King, Sunshine State Athletic Conference (waives in support)
1:44:58 PM S. Maldonado-Ross (waives in support)
1:45:08 PM D. Mortham (waives in support)
1:45:18 PM S 684 (cont.)
1:46:16 PM S 800
1:46:22 PM PCS 380416
1:46:34 PM Sen. Brandes
1:47:39 PM Bob Harris, DeVry University, City College (waives in support)
1:47:44 PM Curtis Austin, Executive Director, Florida Association of Postsecondary Schools and Colleges (waives in support)
1:48:40 PM S 992
1:48:49 PM PCS 841824
1:48:50 PM Sen. Brandes
1:50:21 PM Sen. Hukill
1:50:45 PM Sen. Brandes
1:51:10 PM Sen. Hukill
1:51:13 PM Sen. Brandes
1:51:28 PM Am. 432618
1:51:33 PM Sen. Brandes
1:51:48 PM Am. 702190
1:51:53 PM Sen. Brandes
1:52:21 PM S 992 (cont.)
1:52:22 PM Elizabeth Boyd, Director, Legislative Affairs, Chief Financial Officer Atwater (waives in support)

1:53:19 PM S 994
1:53:20 PM Sen. Negron
1:54:46 PM Audrey Brown, President & Chief Executive Officer, Florida Association of Health Plans
1:57:50 PM Sen. Negron
1:58:12 PM A. Brown
1:58:14 PM Sen. Negron
1:58:36 PM A. Brown
1:59:09 PM Sen. Negron
1:59:47 PM A. Brown
2:00:17 PM Sen. Negron
2:00:43 PM A. Brown
2:01:23 PM Sen. Negron
2:02:07 PM A. Brown
2:02:13 PM Lena Juarez, Molina Healthcare (waives in support)
2:02:18 PM Joe Anne Hart, Director of Governmental Affairs, Florida Dental Association (waives in support)
2:02:39 PM Sen. Hays
2:03:01 PM Sen. Flores
2:03:41 PM Sen. Gaetz
2:05:34 PM Sen. Latvala
2:06:11 PM Sen. Negron
2:08:14 PM S 394
2:08:16 PM Sen. Hays
2:09:04 PM Jennifer Green, President, Florida Institute of Certified Public Accountants
2:10:30 PM David Mica Jr., Director of Legislative Affairs, Department of Business & Professional Regulation (waives in support)
2:11:30 PM S 444
2:11:32 PM Sen. Montford
2:11:59 PM Andrew Ketchel, Director of Legislative Affairs, Department of Environmental Protection (waives in support)
2:12:55 PM S 922
2:12:59 PM PCS 622386
2:13:06 PM Sen. Montford
2:13:38 PM A. Ketchel (waives in support)
2:14:33 PM S 422
2:14:41 PM Sen. Benacquisto
2:15:24 PM Chris Nuland, Consultant, Florida Chapter of the American College of Physicians (waives in support)
2:15:36 PM S. Winn (waives in support)
2:15:39 PM M. Fontaine (waives in support)
2:15:44 PM B. Bishop III (waives in support)
2:15:56 PM Larry Gonzalez, General Counsel, Florida Society of Health-System Pharmacists (waives in support)
2:17:00 PM S 636
2:17:07 PM Sen. Benacquisto
2:17:59 PM Am. 763638
2:18:07 PM Sen. Benacquisto
2:18:19 PM S 636 (cont.)
2:18:24 PM Ron Draa, Director of External Affairs, Department of Law Enforcement (waives in support)
2:18:29 PM Theresa Prichard, Director of Advocacy, Florida Council Against Sexual Violence (waives in support)
2:18:37 PM Tim Stanfield, Florida Police Chiefs Association (waives in support)
2:18:40 PM Ron Book, Lauren's Kids
2:18:41 PM Sen. Benacquisto
2:19:39 PM S 966
2:19:42 PM Sen. Benacquisto
2:21:06 PM Elizabeth Boyd, Director of Legislative Affairs, Chief Financial Officer Atwater (waives in support)
2:21:14 PM Belinda Miller, Chief of Staff, Office of Insurance Regulation (waives in support)
2:21:36 PM Sen. Gaetz
2:22:50 PM Sen. Benacquisto
2:24:44 PM S 1584
2:24:53 PM Sen. Montford
2:26:02 PM Sheldon Gusky, Executive Director, Florida Public Defender Association, Inc. (waives in support)
2:26:07 PM D. Hendrickson (waives in support)
2:27:01 PM S 548
2:27:17 PM PCS 517060

2:27:18 PM Sen. Richter
2:27:50 PM Beth A. Vecchioli, Senior Policy Advisor, Stewart Title Guaranty Co. (waives in support)
2:27:55 PM Douglas A. Mang, First American Title Insurance (waives in support)
2:28:02 PM John La Joie, Senior Operations Counsel, First American Title Insurance Company (waives in support)
2:28:03 PM Alex Overhoff, Executive Director, Floirda Land Title Association (waives in support)
2:28:51 PM S 1026
2:28:55 PM PCS 356798
2:29:05 PM Sen. Simmons
2:30:45 PM Natalie King, Vice President, Sunshine State Athletics Conference (waives in support)
2:30:49 PM Ron Book, Florida High School Athletics Association (waives in support)
2:33:01 PM S 1118
2:33:05 PM Sen. Simmons
2:34:50 PM Brad Nail, Risk Manager, Uber
2:36:18 PM Roger Chapin, Vice President, Meaus (waives in support)
2:36:24 PM Ellyn Bogdanoff, Florida Taxi Association (waives in support)
2:36:25 PM Louis Minardi, President, Florida Taxicab Association (waives in support)
2:36:33 PM John Camillo, President, Yellow Cab of Broward/Leon (waives in support)
2:36:38 PM S 1118 (cont.)
2:37:50 PM
2:37:50 PM
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2:37:50 PM