SB 250 by **Smith (CO-INTRODUCERS) Margolis, Hays, Stargel, Simpson**; (Similar to H 0011) Child Care Facilities

643606	D	S	CF, Altman	Delete everything after	02/18 10:31 AM

SB 326 by **Clemens**; (Similar to CS/H 0021) Substance Abuse Services

819538	D	S L	CF, Dean	Delete everything after	02/18 11:24 AM

SB 340 by **Grimsley**; (Similar to H 0079) Crisis Stabilization Services

SB 360 by **Stargel**; (Similar to CS/H 0007) Public Records/Claim Settlement on Behalf of a Ward or Minor

864886	A	S	CF, Altman	Delete L.52 - 55:	02/18 10:35 AM
579032	A	S	CF, Altman	Delete L.66:	02/18 10:35 AM

SB 496 by **Detert**; (Identical to H 0437) Guardians for Dependent Children who are Developmentally Disabled or Incapacitated

598170	D	S	CF, Detert	Delete everything after	02/18 10:36 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Sobel, Chair
Senator Altman, Vice Chair

MEETING DATE: Thursday, February 19, 2015
TIME: 9:00 —11:00 a.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Sobel, Chair; Senator Altman, Vice Chair; Senators Dean, Detert, Garcia, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Future of Aging in Florida		
2	**SB 250** Smith (Similar H 11)	Child Care Facilities; Requiring that certain membership organizations conduct level 2 background screening for child care personnel; requiring such organizations to demonstrate compliance upon request; excluding certain membership organizations from the definition of the term “child care facility”, etc. CF 02/19/2015 CA AHS AP	
3	**SB 326** Clemens (Similar H 21)	Substance Abuse Services; Requiring the Department of Children and Families to create a voluntary certification program for recovery residences; requiring the department to approve credentialing entities to develop and administer the certification program; requiring an approved credentialing entity to establish procedures for certifying recovery residences that meet certain qualifications; requiring background screening of employees of a recovery residence; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring the department to publish the list on its website, etc. CF 02/19/2015 AHS AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 340** Grimsley (Similar H 79)	Crisis Stabilization Services; Requiring the Department of Children and Families to develop standards and protocols for the collection, storage, transmittal, and analysis of utilization data from public receiving facilities; requiring a managing entity to require public receiving facilities in its provider network to submit certain data within specified timeframes, etc. CF 02/19/2015 AHS AP	
5	**SB 360** Stargel (Similar H 7, Compare CS/H 5, Link S 366)	Public Records/Claim Settlement on Behalf of a Ward or Minor; Providing an exemption from public records requirements for records relating to the settlement of a claim on behalf of a ward or minor; authorizing a guardian ad litem, a ward, a minor, and a minor's attorney to inspect guardianship reports and court records relating to the settlement of a claim on behalf of a ward or minor upon a showing of good cause; authorizing the court to direct disclosure and recording of an amendment to a report or court records relating to the settlement of a claim on behalf of a ward or minor, in connection with real property or for other purposes; providing a statement of public necessity, etc. CF 02/19/2015 GO RC	
6	**SB 496** Detert (Identical H 437)	Guardians for Dependent Children who are Developmentally Disabled or Incapacitated; Requiring an updated case plan developed in a face-to-face conference with the child and other specified persons, when appropriate; requiring the probate court to initiate proceedings for appointment of guardian advocates if petitions are filed for appointment of guardian advocates for certain minors who are subject to chapter 39, F.S., proceedings if such minors have attained a specified age, etc. CF 02/19/2015 JU AP	
	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 Children, Families, and Elder Affairs

BILL:	SB 250
INTRODUCER:	Senator Smith
SUBJECT:	Child Care Facilities
DATE:	February 4, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Pre-meeting**
2.			CA	
3.			AHS	
4.			AP	

I. Summary:

SB 250 amends the law related to child care facilities. It revises legislative intent related to child care facilities to clarify that membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302, F.S., are not considered to be child care facilities and therefore are not subject to licensing requirements or minimum standards for child care facilities. The bill requires the child care personnel of these organizations to undergo a level two background screening and demonstrate compliance upon request from an authorized state agency.

The bill also adds these membership organizations to the list of entities not included in the definition of "child care facilities."

The bill is not expected to have a significant fiscal impact on state government.

The bill has an effective date of July 1, 2015.

II. Present Situation:

Legislative Intent Related to Child Care and Child Care Facilities

Florida law provides that for parents who choose child care, it is the intent of the legislature to protect the health and welfare of children in care. To accomplish this, the law provides a regulatory framework that promotes the growth and stability of the child care industry and facilitates the safe physical, intellectual, motor, and social development of the child.[1]

[1] Section 402.26, F.S.

Florida law also provides that it is the intent of the Legislature to protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care.[2] To further that intent, laws were enacted to:

- Establish statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to provide for enforcement to regulate conditions in such facilities through a program of licensing; and [3]
- Require that all owners, operators, and child care personnel shall be of good moral character.[4]

Child Care

Child care is defined as the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.[5]

Child care is typically thought of as care and supervision for children under school age. Legislative intent related to child care finds that many parents with children under age 6 are employed outside the home.[6] The definition of child care does not specify a maximum or minimum age.

Florida law and administrative rules related to child care recognize that families may also have a need for care and supervision for children of school age:

- The term indoor recreational facility means an indoor commercial facility which is established for the primary purpose of entertaining children in a planned fitness environment through equipment, games, and activities in conjunction with food service and which provides **child care** for a particular child no more than 4 hours on any one day. An indoor recreational facility must be licensed as a child care facility.[7]
- A school-age child care program is defined as any licensed child care facility serving school-aged children[8] or any before and after school programs that are licensed as a child care facility and serve only school-aged children.[9]
- Any of the after school programs accepting children under the age of the school-age child must be licensed.[10]
- An after school program serving school-age children is not required to be licensed if the program provides after school care exclusively for children in grades six and above and complies with the minimum background screening requirements.[11]

[2] Section 402.301, F.S.
[3] Sections 402.301 - 402.319, F.S.
[4] Good moral character is based upon screening that shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. *See* s. 402.305, F.S.
[5] Section 402.302, F.S.
[6] *Id*.
[7] *Id*.
[8] Chapter 65C-22.008, F.A.C. "School-age child" means a child who is at least 5 years of age by September 1, of the beginning of the school year and who attends kindergarten through grade five.
[9] *Id*.
[10] *Id*.
[11] *Id*.

Child Care Facilities

The term "child care facility" is defined to include any child care center or child care arrangement that cares for more than five children unrelated to the operator and receives a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.[12] The definition excludes the following:

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025. F.S.;
- Summer camps having children in full-time residence;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments, as defined in chapter 509,[13] which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the level 2 screening requirements of chapter 435.[14]

Every child care facility in the state is required to have a license that is renewed annually. The Department of Children and Families (DCF or department) or the local licensing agencies[15] approved by the department are the entities responsible for the licensure of such child care facilities.[16]

Additional Exemptions

In 1974 and in 1987, the Legislature created additional exceptions to the stated intent to protect the health, safety, and well-being of the children by allowing specified entities to care for children without meeting state licensure standards.

The exemption created for child care facilities that are an integral part of church or parochial schools that meet specified criteria are exempt from licensing standards but must conduct background screening of their personnel. Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure.[17]

The exemption for membership organizations[18] was broader and allowed personnel to have contact with children without being background screened.[19]

[12] Section 402.302, F.S.
[13] "Transient public lodging establishing" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.
[14] Section 402.302, F.S.
[15] Currently, there are five counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota. Department of Children and Families, *House Bill 11 Analysis* (Dec. 8, 2014).
[16] Section 402.308, F.S.
[17] Section 402.316, F.S.
[18] Membership organizations would include such groups as Big Brothers Big Sisters, Boys and Girls Clubs, YMCA's, and Boy Scouts or Girl Scouts.
[19] Chapters 74-113 and 87-238, Laws of Florida.

Background Screening

Currently, Florida has one of the largest vulnerable populations in the country with 21 percent of residents under the age of 17 and 18 percent of the state residents over the age of 65, as well as children and older adults with disabilities.[20] These vulnerable populations require special care as they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

In September 2009, the Fort Lauderdale Sun Sentinel published a series of articles detailing their 6 month investigation into Florida's background screening system for caregivers of children, the elderly and disabled.[21] To address these issues, the Legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of persons and businesses that deal primarily with vulnerable populations.[22]

Major changes to the state's background screening laws included:

- Requiring that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified;
- Increasing all level 1 screening which is name-based state criminal history search, to level 2 screening which is a fingerprint based national criminal history search;[23]
- Requiring all fingerprint submissions to be done electronically no later than August 1, 2012, or earlier. However, for those applying under the Agency for Health Care Administration (AHCA), electronic prints were required as of August 1, 2010;
- Requiring certain personnel who dealt substantially with vulnerable persons and who were not presently being screened, including persons who volunteered for more than 10 hours a month, to begin level 2 screening;
- Adding additional serious crimes to the list of disqualifying offenses for level 1 and level 2 screening;
- Authorizing agencies to request the retention of fingerprints by FDLE;
- Providing that an exemption for a disqualifying felony may not be granted until after at least 3 years from the completion of all sentencing sanctions for that felony;
- Requiring that all exemptions from disqualification be granted only by the agency head; and

[20] University of Florida. Bureau of Economic and Business Research, College of Liberal Arts and Sciences. *Florida Estimates of Population 2014* (April 1, 2014), *available at* http://edr.state.fl.us/Content/population-demographics/data/PopulationEstimates2014.pdf. (last visited Feb. 15, 2015).
[21] Sun Sentinel. *Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes*.
[22] Chapter 2010-114, Laws of Florida.
[23] Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. Anyone undergoing a level 1 screening must not have been found guilty of any of the specified offenses. Section 435.03, F.S. A level 2 screening consists of a fingerprint-based search of FDLE and the FBI databases for state and national criminal arrest records. Any person undergoing a level 2 screening must not have been found guilty of any of the offenses for level 1 or additional specified offenses. Section 435.04, F.S.

- Rewriting all screening provisions for clarity and consistency.[24]

Care Provider Background Screening Clearinghouse

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with those entities, including paid employees and volunteers are subject to background screening requirements.[25] However, due to restrictions placed on the sharing of criminal history information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting. This is time consuming to those involved and increases the cost to the employer or employee.

Policies imposed by the Federal Bureau of Investigation (FBI) prevent the sharing of criminal history information except within a given "program." Since each regulatory area is covered by a different controlling statute and screenings are done for separate purposes, the screenings have been viewed as separate "program" areas and sharing of results has not been allowed. In addition, screenings are only as good as the date they are run. Arrests or convictions occurring after the screening are not known until the person is rescreened or self-reports.

As a result, the legislature created the Care Provider Background Screening Clearinghouse (clearinghouse) in 2012.[26]The purpose of the clearinghouse is to create a single "program" to screen individuals who have direct contact with vulnerable persons. The clearinghouse is created within the Agency for Health Care Administration (AHCA) and is to be implemented in consultation with the Florida Department of Law Enforcement (FDLE). The Clearinghouse is a secure internet web-based system and was implemented by September 30, 2013, and allows for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.[27]

Fingerprints of individuals having contact with vulnerable persons providers are retained by FDLE, meaning the electronically scanned image of the print will be stored digitally. The FDLE searches the retained prints against incoming Florida arrests and is required to report the results to AHCA for inclusion in the clearinghouse, thus avoiding the need for future screens and related fees.[28]

A digital photograph of the person screened will be taken at the time the fingerprints are taken and retained by FDLE in electronic format, as well. This enables accurate identification of the person when they change jobs or are otherwise presented with a situation requiring screening and enables the new employer to access the clearinghouse to verify that the person has been screened, is in the clearinghouse, and is who they say they are. Once a person's fingerprints are

[24] *Id*.
[25] One exception to those screening requirements are the membership organizations addressed in SB 250 (2015).
[26] Section 435.12, F.S.
[27] "Specified agency" means the Department of Health, the Department of Children and Families, the Agency for Health Care Administration, the Department of Elder Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities, when these agencies are conducting state and national criminal history background screening on persons who work with children, elderly or disabled persons.
[28] Section 435.12, F.S.

in the clearinghouse, they will not have to be reprinted in order to send their fingerprints to the FBI which will save on further fees.[29]

Attorney General Advisory Legal Opinion

In 2000, the Florida Office of the Attorney General issued an opinion relating to the issue of child care, child care facilities and licensure. At issue was whether or not the child care programs operated by the YMCA or other membership organizations were exempt from licensure by the department as child care facilities. The opinion issued stated that programs operated by YMCAs and other membership organizations that fall within the definition of a "child care program", are not exempt from licensure by the Department of Children and Families.[30]

III. Effect of Proposed Changes:

Section 1 amends s. 402.301, F.S., related to legislative intent and policy to clarify the provision that membership organizations meeting certain criteria are not subject to licensing requirements and minimum standards for child care facilities. It also adds a requirement that membership organizations background screen "child care personnel" at level 2 standards and demonstrate compliance upon the request of an authorized state agency.

The provision that grants certain membership organizations an exemption from being considered child care facilities is found in a legislative intent section of the law. The effect of that placement is that the Legislature "intended" for certain membership organizations to be exempt from licensure requirements, but there is no provision in the substantive law actually granting them the exemption. Substantive provisions should not in included in an intent section.[31]

Section 2 amends s. 402.302, F.S., related to child care facilities, to add membership organizations that meet specified criteria to the list of entities that are not to be considered child care facilities.

Lines 31-33 and lines 66-67 refer to membership organizations that are "certified by their national associations or organizations as being in compliance with their minimum standards and procedures." However, it is unclear what the minimum standards and procedures are and how compliance is enforced.

For example, the Boys and Girls Club of America (BCGA) reports that ensuring the safety of children is fundamental to their mission. Through their Child & Club Safety Department, they have implemented a six-step plan that follows the best practices available today:[32]

[29] *Id*.
[30] Op. Att'y Gen. Fla. 2000-67 (2000).
[31] Office of Bill Drafting Services, The Florida Senate, *Manual for Drafting Legislation-Sixth Edition* (2009).
[32] Boy and Girls Clubs of America, Child Safety, *available at* http://www.bgca.org/whywecare/ChildAndClubSafety/Pages/ChildSafety.aspx. (last visited Feb. 16, 2015).

- Criminal background checks are required for every staff member and volunteer who has direct contact with children. BGCA partners with LexisNexis, the world's largest data company, to provide the most comprehensive screenings available today.[33]
- Through their partnership with Praesidium, BGCA provides a 24-hour toll-free Child Safety Hotline to allow Club managers, staff members, volunteers and Club members to confidentially report suspicions or concerns.
- Safety policies and procedures must adhere to the highest standards. Clubs are required to report any suspected child abuse to local authorities. No adult should ever be alone with a child – all activities inside and outside the Club must have appropriate ratios of staff and members.
- All facilities and vehicles are required to comply with federal, state and local safety laws. BGCA works with leading experts in the area of security technology to develop state-of-the art solutions for our 4,000 sites.[34]

The DCF reports that exemptions from licensing standards provided by the bill are inconsistent with the legislative intent to protect the well-being of the children of Florida by establishing minimum licensing standards to ensure health and safety in child care facilities. The proposed bill states that, 'organizations must be certified by their national organization's minimum standards and procedures' and as such, 'are not subject to the licensing requirements or the minimum standards for child care facilities.' However, the bill alludes to the fact that these national membership organizations meet minimum health and safety standards through a "certification process" yet, there is no specification of the "certification process," nor is there any description of a monitoring process by the organization.[35]

Section 3 provides for an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[33] In 1986, the Boys and Girls Clubs of America recommended the use of background checks. The following year, the clubs in Florida sought and received an exemption from screening from the Florida Legislature. *See* The Los Angeles Times, Boy *Scouts' opposition to background checks let pedophiles in*, December 2, 2012 and Florida Office of the Attorney General. Advisory Legal Opinion, Number AGO 2000-67, November 17, 2000.
[34] *Id*.
[35] Department of Children and Families, Senate *Bill 250 Analysis HB 11*, December 8, 2014.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact of SB 250 is unknown; however, membership organizations or their employees will have to bear the cost of screening. The FDLE reports that the cost for a state and national criminal history record check is $38.75. $24 goes into the FDLE Operating Trust Fund and $14.75 from each request is forwarded to the Federal Bureau of Investigation. There is also a $13 lifetime federal fingerprint retention fee and a $6 annual fee for state retention, with the first year included with record check.[36]

One of those membership organizations, the Boys and Girls Clubs, is currently exempt from background screening requirements in Florida.[37]The Florida Alliance of Boys and Girls Clubs reports that in 2009 there were 2,900 adult staff and 7,300 program volunteers in Florida.[38]

C. Government Sector Impact:

The bill does not necessitate additional FTEs or other resources. The number of additional background screenings is needed to determine the impact on the agency's technology systems. [39]

VI. Technical Deficiencies:

The description of membership organizations on lines 22-33 does not match the description of the same membership organizations on lines 61-68.

Lines 39-40 reference "authorized state agency." There is not a definition of the term in the Florida Statutes, so it is unclear what state agency the term is referring to.

VII. Related Issues:

Lines 33-36 of the bill clarify that membership organizations are not to be considered child care facilities and are therefore not subject to licensure requirements or minimum standards. However, since this exception is granted only in legislative intent and not in substantive law, these organizations may not have an exemption.

Lines 37-38 require membership organizations to conduct background screening of child care personnel. Since the definition of the term "child care personnel" means all owners, operators,

[36] Florida Department of Law Enforcement, *Senate Bill 250 Analysis* (Feb. 13, 2015).
[37] Section 402.301, F.S.
[38] The Florida Alliance of Boys and Girls Clubs, *2009 Florida Fact Book*, available at http://www.floridaalliance.org/index.html. (last visited Feb. 14, 2015).
[39] *Id*.

employees, and volunteers working in a child care facility, it would appear that these membership organizations may be child care facilities and subject to licensure by the department.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.301 and 402.302.

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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (6) of section 402.301, Florida Statutes, is amended to read:

402.301 Child care facilities; legislative intent and declaration of purpose and policy.— It is the legislative intent to protect the health, safety, and well-being of the children of

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the state and to promote their emotional and intellectual development and care. Toward that end:

(6) It is further the intent and policy of the Legislature that membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302;~~,~~ whose primary purpose is the provision of after school programs, delinquency prevention programs, and ~~providing~~ activities that contribute to the development of good character; which are operated 5 days per week or more; which are facility-based or school-based; ~~or good sportsmanship or to the education or cultural development of minors in this state,~~ which charge only a nominal annual membership fee or no fee;~~,~~ which are not for profit;~~,~~ and which are certified by their national associations as being in compliance with the association's minimum standards and procedures are ~~shall~~ not ~~be~~ considered child care facilities and therefore are not subject to the licensing requirements or minimum standards for child care facilities~~, their personnel shall not be required to be screened.~~ However, such membership organizations shall meet the background screening requirements pursuant to ss. 402.305(2)(a) and 402.3055.

Section 2. Paragraph (f) is added to subsection (2) of section 402.302, Florida Statutes, to read:

(2) "Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included:

(a) Public schools and nonpublic schools and their integral programs, except as provided in s.402.3035.~~;~~

(b) Summer camps having children in full-time residence.~~;~~

(c) Summer day camps.~~;~~

(d) Bible schools normally conducted during vacation periods.~~;~~ ~~and~~

(e) Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

(f) Membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302, whose primary purpose is the provision of after school programs, delinquency prevention programs, and activities that contribute to the development of good character; which are operated 5 days per week or more; which are facility-based or school-based; which charge only a nominal annual membership fee or no fee; which are not for profit; and which are certified by their national associations as being in compliance with the association's minimum standards. However, such organizations shall meet the background screening requirements pursuant to ss. 402.305(2)(a) and 402.3055.

Section 3. Section 402.316, Florida Statutes, is amended to read:

402.316 Exemptions.—

(1) The provisions of ss. 402.301-402.319, except for the requirements regarding screening of child care personnel, shall not apply to a child care facility which is an integral part of

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church or parochial schools conducting regularly scheduled classes, courses of study, or educational programs accredited by, or by a member of, an organization which publishes and requires compliance with its standards for health, safety, and sanitation. However, such facilities shall meet minimum requirements of the applicable local governing body as to health, sanitation, and safety and shall meet the screening requirements pursuant to ss. 402.305 and 402.3055. Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure.

(2) The provisions of ss. 402.301-402.319, except for the requirements regarding screening of personnel, shall not apply to membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302, whose primary purpose is the provision of after school programs, delinquency prevention programs, and activities that contribute to the development of good character; which are operated 5 days per week or more; which are facility-based or school-based; which charge only a nominal annual membership fee or no fee; which are not for profit; and which are certified by their national associations as being in compliance with the association's minimum standards. However, such organizations shall meet the background screening requirements pursuant to ss. 402.305(2)(a) and 402.3055.

(3) ~~(2)~~ Any county or city with state or local child care licensing programs in existence on July 1, 1974, will continue to license the child care facilities as covered by such programs, notwithstanding the provisions of subsection (1), until and unless the licensing agency makes a determination to

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exempt them.

(4) ~~(3)~~ Any child care facility covered by the exemption provisions of subsection (1), but desiring to be included in this act, is authorized to do so by submitting notification to the department. Once licensed, such facility cannot withdraw from the act and continue to operate.

Section. This act shall take effect July 1, 2015.

========== 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 child care facilities; amending s. 402.301, F.S.; revising legislative intent and policy; clarifying that membership organizations are not subject to licensing requirements or minimum standards for child care facilities; requiring membership organizations to meet certain background screening requirements; amending s. 402.302, F.S.; adding certain membership organizations to entities that are not considered to be child care facilities; amending s. 402.316, F.S.; providing an exemption to membership organizations from licensure requirements; requiring membership organizations to comply with the requirements relating to screening of child care personnel under ss. 402.305 and 402.3055 , F.S.;; providing an effective date.

By Senator Smith

31-00086A-15 2015250__

A bill to be entitled

An act relating to child care facilities; amending s. 402.301, F.S.; revising legislative intent and policy; requiring that certain membership organizations conduct level 2 background screening for child care personnel; requiring such organizations to demonstrate compliance upon request; amending s. 402.302, F.S.; excluding certain membership organizations from the definition of the term "child care facility"; providing an effective date.

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

Section 1. Subsection (6) of section 402.301, Florida Statutes, is amended to read:

402.301 Child care facilities; legislative intent and declaration of purpose and policy.—It is the legislative intent to protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care. Toward that end:

(6) It is further the intent and policy of the Legislature that membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302;~~,~~ whose primary purpose is the provision of after school programs, delinquency prevention programs, and ~~providing~~ activities that contribute to the development of good character; which are operated 5 days per week or more; which are facility-based or school-based; ~~or good sportsmanship or to the education or cultural development of minors in this state,~~ which charge

31-00086A-15 2015250__

only a nominal annual membership fee or no fee;~~,~~ which are not for profit;~~,~~ and which are certified by their national associations as being in compliance with the association's minimum standards and procedures are ~~shall~~ not ~~be~~ considered child care facilities and therefore are not subject to the licensing requirements or minimum standards for child care facilities~~, their personnel shall not be required to be screened~~. However, such membership organizations shall conduct background screening of child care personnel in compliance with ss. 435.04 and 435.12 and, upon request of an authorized state agency, shall demonstrate compliance with this subsection.

Section 2. Paragraph (f) is added to subsection (2) of section 402.302, Florida Statutes, to read:

402.302 Definitions.—As used in this chapter, the term:

(2) "Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included:

(a) Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025.~~,~~

(b) Summer camps having children in full-time residence.~~,~~

(c) Summer day camps.~~,~~

(d) Bible schools normally conducted during vacation periods.~~; and~~

(e) Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child

care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

(f) Membership organizations whose primary purpose is the provision of activities that contribute to the development of good character; after school programs; and delinquency prevention programs, if those activities and programs are operated at least 5 days a week, are facility or school based, are not for profit, and are certified by their national organizations as being in compliance with their minimum standards and procedures.

Section 3. This act shall take effect July 1, 2015.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 326
INTRODUCER:	Senator Clemens
SUBJECT:	Substance Abuse Services
DATE:	February 9, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Pre-meeting**
2.			AHS	
3.			AP	

I. Summary:

SB 326 establishes processes for the voluntary certification of recovery residences and recovery residence administrators. The Department of Children and Families (DCF or department) is required to approve credentialing entities to develop and administer the certification programs. The credentialing entities are required to establish procedures for the certification of recovery residences. The credentialing entities must establish procedures to administer the application, certification, recertification and disciplinary processes; monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements; interview and evaluate residents, employees and volunteer staff on their knowledge and application of certification requirements; provide training for owners, managers, and staff; develop a code of ethics and establish the application, inspection and annual certification renewal fees.

The also bill provides for application, examination and certification fees for the recovery residence administrator. The credentialing entity is authorized in the bill to suspend or revoke certification if a certified recovery residence administrator does not meet and maintain certain criteria. The bill allows DCF to exempt an individual from disqualifying offenses of a level 2 background screening if the individual meets certain criteria and the recovery residence attests to that such exemption is in the best interest of the program. The DCF is also required to publish a list of all recovery residences and recovery residence administrators on its website but allows for the exclusion of a recovery residence or recovery residence administrator upon written request.

The bill has an indeterminate fiscal impact on the DCF and may reduce the costs for local governments. This bill has an effective date of July 1, 2015.

II. Present Situation:

Recovery residences (also known as "sober homes") function under the premise that individuals benefit in their recovery by residing in a recovery residence. There is no universally accepted

definition of a recovery residences; however unlike most halfway houses, which receive government funding and limit the length of stays, recovery residences are financially self-sustaining through rent and fees paid by residents and there is no limit on the length of stay for those who abide by the rules.[1] Recovery residences are abstinence-based environments where consumption of alcohol or other drugs results in evictions.[2] A 2009 Connecticut study notes the following: "Sober houses do not provide treatment, [they are] just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation."[3]

Some recovery residences voluntarily join coalitions or associations[4] that monitor health, safety, quality, and adherence to the membership requirements for the specific coalition or association.[5] The exact number of recovery residences in Florida is currently unknown.[6] The facilities, operators and organizational design of recovery residences vary greatly. It is argued that the location of the home is critical to recovery and placing the home in a single-family neighborhood helps to avoid temptations that other environments can create.[7] Organizationally, these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.[8]

In 2013, the DCF conducted a study of recovery residences in Florida.[9] The DCF sought public comment relating to community concerns for recovery residences. Three common concerns for the recovery residences were the safety of the residents, safety of the neighborhoods and lack of governmental oversight.[10]

The following concerns were raised by participants at public meetings:

- Residents being evicted with little or no notice;
- Unscrupulous landlords, including an alleged sexual offender who was running a women's program;
- A recovery residence owned by a bar owner and attached to the bar;

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[1] Department of Children and Families, Office of Substance Abuse and Mental Health, *Recovery Residence Report* (Oct. 1, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[2] *Id*.
[3] *Id*.
[4] Douglas L. Polcin, Ed.D., MFT and Diane Henderson B.A., *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses*, The Journal of Psychoactive Drugs, Vol. 40, No. 2, June 2008; pp. 153-159, available at http://www.biomedsearch.com/article/Clean- sober-place-to-live/195982213.html
[5] *Id*.
[6] *DCF Report* at page 6.
[7] M.M. Gorman *et al.*, *Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[8] M.M. Gorman *et al*., *supra* note 2.
[9] Ch. 2013-040, L.O.F. The 2013-2014 General Appropriations Act directed DCF to determine whether to establish a licensure/registration process for recovery residences and to provide the Governor and Legislature with a report on its findings. In its report, DCF was required to identify the number of recovery residences operating in Florida, identify benefits and concerns in connection with the operation of recovery residences, and the impact of recovery residences on effective treatment of alcoholism and on recovery residence residents and surrounding neighborhoods. DCF was also required to include the feasibility, cost, and consequences of licensing, regulating, registering, or certifying recovery residences and their operators. DCF submitted its report o the Governor and Legislature on October 1, 2013.
[10] *Recovery Residence Report*, *supra* note 4.

- Residents dying in recovery residences;
- Lack of regulation and harm to neighborhoods;
- Land use problems and nuisance issues caused by visitors at recovery residences, including issues with trash, noise, fights, petty crimes, substandard maintenance, and parking;
- Mismanagement of resident funds or medication;
- Lack of security at recovery residences and abuse of residents;
- The need for background checks of recovery residence staff;
- The number of residents living in some recovery residences and the living conditions of these recovery residences;
- Houses being advertised as treatment facilities and marketed as the entry point for treatment rather than as a supportive service for individuals who are existing treatment;
- False advertising;
- Medical tourism;
- Whether state agencies have the resources to enforce regulations and adequately regulate these homes;
- The allegation that medical providers are capable of ordering medical tests, and billing insurance companies were doing so unlawfully;
- Lack of uniformity in standards; and
- Alleged patient brokering, in violation of Florida Statutes.[11]

Currently, recovery residences, or their functional equivalent, are not subject to the DCF of state oversight. Furthermore, there is not currently a statewide certification process for recovery residence administrators. The DCF does not identify or endorse any entities that are responsible for the certification of recovery residence professionals.

Persons that are licensed or employed in professions that serve vulnerable populations are required to be of good moral character and most are required to comply with background screening requirements in ch. 435, F.S. Currently, the level 2 background screening requirements in s. 435.04, F.S., does not apply to staff employed by a licensed substance abuse treatment provider that have direct contact with adults who are not developmentally disabled that are receiving services.[12] This specific adult population is not considered a vulnerable population under ch. 435, F.S.,[13] and therefore, the licensed service provider personnel that have direct contact only with this specific adult population are not subject to level 2 background screening requirements.

The department is aware of at least one private entity in Florida, the Florida Association of Recovery Residences (FARR) that currently certifies recovery residences in accordance with national standards of the certification program developed by the National Alliance of Recovery Residences (NARR). Certification is voluntary and the national standards are only for the certification of recovery residences – recovery residence administrators are not currently certified under the existing certification program.

[11] *Id*.
[12] Section 397.451, F.S.
[13] Section 435.02(6), F.S.

Federal Law

Fair Housing Act

The Federal Fair Housing Act of 1988 (FHA)[14] prohibits discrimination on the basis of a handicap in all types of housing transactions. The FHA defines a "handicap" to mean those mental or physical impairments that substantially limit one or more major life activities. The term "mental or physical impairment" may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking or working. The FHA also protects persons who have a record of such impairment, or are regarded as having such impairment. Current users of illegal controlled substances, person convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FHA.[15]

The Florida Fair Housing Act in s. 760.23(7)(b), F.S., provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available. The statue defines "discrimination" to include a refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Americans with Disabilities Act

In July 1999, the United States Supreme Court held that the unnecessary institutionalization of people with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).[16] In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective community-based services. This decision interpreted Title II of the ADA and its implementing regulation, requiring states to administer their services, programs, and activities "in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities." The ADA and the Olmstead decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.[17] In addition, in the *United States of America v. City of Boca Raton*, the court held that the city's ordinance excluding substance abuse treatment facilities from residential areas violates the FHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.[18]

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[14] 42 U.S.C. 3601 *et seq.*
[15] *See* U.S. Department of Justice, *The Fair Housing Act, available at* http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited Feb. 13, 2015).
[16] *Olmstead v. L.C.*, 527 U.S. 581, (1999).
[17] U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All? available at* http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited Feb. 6, 2014).
[18] *United States of America vs. City of Boca Raton* 1008 WL 686689 (S.D.Fla.2008).

III. Effect of Proposed Changes:

Section 1 amends s. 397.311, F.S., to add definitions for six new terms to implement the voluntary program for certification of recovery residences – "certificate of compliance," "certified recovery residence," certified recovery residence administrator," "credentialing entity," "recovery residence," and "recovery residence administrator."

The bill defines the term "certified recovery residence" to mean "a recovery residence that holds a valid certificate of compliance or that is actively managed by a certified recovery residence administrator." As written, this would allow a recovery residence to be certified by virtue of the professional certification of the administrator. The bill does not define "actively managed" and it is unclear whether multiple recovery residences that were managed by the same administrator could be certified by virtue of the administrator's certification.

The bill also defines the term "recovery residence" to mean "a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment." This definition could include other types of housing such as supportive housing for homeless persons, domestic violence shelters, or halfway houses operated by or under contract with the Florida Department of Corrections and the Florida Department of Juvenile Justice. It is also unclear whether "other form of group housing" refers to the physical grouping of housing units, such as a group of apartments or townhomes, or the group living arrangements for a specific group or population, such as group homes, foster homes, or community residential homes.

Section 2 creates a new section of Florida Statutes, requiring DCF to approve one or more credentialing entities for the purposes of developing and administering a voluntary certification program for recovery residences. The bill prescribes a series of standards that would be codified for a credentialing entity and the requirements and criteria that recovery residences must meet in order to be certified. However, the bill does not specify the criteria or approval process that DCF must use to evaluate and approve a credentialing entity. The bill does not appear to give DCF discretion, or the ability to "deny" approval of a credentialing entity. In addition, the bill does not provide DCF with rule-making authority necessary to establish the requirements and process for evaluating and approving these credentialing entities.

In the bill, the credentialing entities are required to establish processes for several items, such as training and development of code of ethics. It is unclear if this is directed towards staff and volunteers, or for those individuals living in the recovery residence. The policy and procedures manual would also be required to include a "good neighbor" policy to address neighborhood concerns and complaints.

As previously noted, the term "credentialing entity" is defined as a "nonprofit organization that develops and administers professional certification programs according to nationally recognized certification and psychometric standards" but the bill does not require the certification to be based on nationally recognized standards or psychometric standards. The certification of

recovery residences would not be considered a type of professional certification but rather a type of facility or organization certification.

This section also requires the credentialing entity to, among many other things, "interview and evaluate residents, employees and volunteer staff on their knowledge and application of certification requirements." It is not clear why the credentialing entity would need to interview and evaluate residents on their knowledge of the certification requirements.

The credentialing entity must also establish application, inspection, and annual certification renewal fees. Application and annual certification renewal fees may not exceed $100, however, the inspection fee shall reflect actual costs for inspectors. An inspection must be performed before a recovery residence can be approved for certification. The approved credentialing entity must inspect certified recovery residences at least once a year. The bill does not specify the tasks or expenses that could be included as an actual cost of inspection, nor does the bill establish a maximum dollar amount for the fee that a recovery residence must pay for an inspection. The establishment of fees for application, inspection and certification appears to be the only compensation that a credentialing entity would receive in exchange for administering recovery residences.

The bill specifies that the credentialing entity shall require all employees of a recovery residence to submit to and pass a level 2 background screening pursuant to s. 435.04, F.S., as a condition of certification. The DCF is responsible for receiving and reviewing the results of the background screenings in order to determine if an employee meets the "certification requirements." The credentialing entity shall deny a recovery residence's application and may revoke or suspend the certification if employees subject to the disqualifying offenses set forth in s. 435.04(2), F.S., do not have an exemption granted by DCF pursuant to s. 397.4872, F.S.

The bill requires that all employed staff of recovery residences must submit to and pass a level 2 background screening pursuant to s. 435.04, F.S. If an employee is subject to a disqualifying offense set forth in s. 435.04(2), F.S, DCF may grant an exemption from disqualification for disqualifying offenses pursuant to s. 397.4872, F.S. (created in section 4 of the bill). As written, the exemptions provided in s. 397.4872, F.S., conflict with the existing requirements in s. 435.07, F.S. In s. 435.07(4)(b), F.S., disqualifications from employment are not allowed to be removed from, nor may an exemption be granted to, any person who is a sexual predator as designated pursuant to s. 775.21, F.S., career offender pursuant to s. 775.261, F.S., or sexual offender pursuant to s. 943.0435, F.S., unless the requirement to register as a sexual offender has been removed pursuant to s. 973.04354, F.S.

The bill also makes it a misdemeanor, pursuant to ss. 775.082 or 775.083, F.S., to advertise as a "certified recovery residence" unless such residence has secured a certificate of compliance.

Section 3 creates a new section of Florida Statutes, requiring DCF to approve one or more credentialing entities for the purposes of developing and administering a voluntary certification program for recovery residence administrators. The bill sets forth standards that would be codified for a credentialing entity and the requirements and criteria that recovery residence administrators must meet to be certified. However, the bill does not specify the criteria or approval process that DCF must use in order to evaluate and approve a credentialing entity.

The bill requires the credentialing entity to approve qualified training entities to provide precertification training to applicants and continuing education to certified recovery residence administrators. An approved credentialing entity or its affiliate is prohibited from providing training to applicants and continuing education to recovery residence administrators to avoid a conflict of interest. The bill's language does not clarify how the provision of training by the approved credentialing entity would create a conflict of interest or what would constitute a conflict of interest. It is also unclear if DCF would have to review the criteria used by the credentialing entity to evaluate and approve qualified training entities as part of its own process to evaluate and approve the credentialing entity. The bill does not specify whether there is a fee associated with the training and which entity would receive the fees.

The bill contains a provision establishing level 2 background screening for each recovery residence administrators. If as a result of the background screening a recovery residence administrator is subject to a disqualifying offense set forth in s. 435.04(2), F.S, DCF may grant an exemption from disqualification for disqualifying offenses pursuant to s. 397.4872, F.S. (created in section 4 of the bill). As written, the exemptions provided in s. 397.4872, F.S., conflict with the existing requirements in s. 435.07, F.S, which provides that disqualification from employment may not be removed from, nor may an exemption be granted to, any person who is a sexual predator as designated pursuant to s. 775.21; career offender pursuant to s. 775.261; or sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 973.04354, F.S.

The bill requires a credentialing entity to establish a certification program that "is directly related to the core competencies" but this is not defined. The credentialing entity is given the authority to suspend or revoke an administrator's certificate of compliance, but does not provide for any appeal.

Section 4 creates a new section of Florida Statutes, which provides exemptions to staff disqualifications and administrator ineligibility due to disqualifying offenses identified in the background screening results. It is not clear if DCF or the credentialing entity is responsible for notifying the individual that he or she is subject to qualifying defenses, a time period for submitting a request for exemption, who should be notified of DCF's decision regarding the request for exemption, or how a decision made by DCF regarding an exemption can be contested, if at all.

By April 1, 2016, a credentialing entity shall submit a list of certified recovery residences and certified recovery residence administrators to DCF which will be posted on the department's website.

Section 5 amends s. 397.407, F.S., requiring licensed substance abuse treatment providers (licensed service providers) to only refer current and discharged patients to recovery residences that hold a valid certificate of compliance as provided in s. 394.487, F.S., (created in section 2 of the bill), is actively managed by a certified recovery residence administrator as provided in s. 397.4871, F.S., (created in section 3 of the bill), or both, if owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary after July 1, 2016.

Sections 6, 7, 8, 9 and 10 revises statutory cross-references.

Section 11 provides an effective date of July 1, 2015.

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 of SB 326 on recovery residences or recovery residence administrators is indeterminate as it is dependent upon the number of individuals and entities that elect to participate in the voluntary certification program. Application fees may not exceed $100 for certification of a recovery residence. Recovery residence certification also requires inspection fees to be charged at cost. Application fees for recovery residence administrators cannot exceed $225 and renewal fees cannot exceed $100.

The bill requires fingerprints be submitted to FDLE and FBI as part of the required background screening and provides these costs be covered by prospective employees or volunteers of the credentialing entity. The cost for level 2 background screens range from $38 to $75 depending upon the selected vendor.[19]

C. Government Sector Impact:

The bill requires DCF to review level 2 background screening results for the employees of recovery residences and all applicants to become certified recovery residence administrators as a condition of certification. The department is additionally required to review all requests for exemptions from disqualifying offenses. This will increase the number of screenings and requests for exemptions that DCF handles per year. The extent

[19] Department of Children and Families, *Background Screening*, http://www.dcf.state.fl.us/programs/backgroundscreening/map.asp (lasted visited Feb. 14, 2015).

of the increase is indeterminate as the exact number of recovery residences and associated employees is currently unknown. According to DCF, a background screening FTE position is capable of completing 7,655 screenings per year.[20] The cost for this position is $63,917 with an annual recurring expense of $60,035.[21]

VI. Technical Deficiencies:

As written, the certification requirements that must be established by an approved credentialing entity as required by section 2 of the bill appear to contradict with the definition of "credentialing entity" in section 1 of the bill.

The bill does not specify whether an employee of a recovery residence must undergo level 2 background screening each year as a requirement for application for renewal of a recovery residence's application. The bill does not address persons who are not required to be re-fingerprinted. Clarification is needed as this would impact workload and fiscal impact to DCF.

The bill specifies that the certification of recovery residences and recovery residence administrators is voluntary; however, the bill requires licensed substance abuse treatment providers to only refer current and discharged patients to recovery residences that hold a valid certificate of compliance, is actively managed by a certified recovery residence administrator, or both, or is owned and operated by a licensed service provider or licensed service provider's wholly owned subsidiary.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.311, 397.407, 212.055, 394.9085, 397.405, 397.416, and 440.102

This bill creates the following sections of the Florida Statutes: 397.487, 397.4871 and 397.4872.

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.

[20] Department of Children and Families, *Senate Bill 326 Analysis*, (Jan. 27, 2015).
[21] *Id*.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Children, Families, and Elder Affairs (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (7) and (32) of section 397.311, Florida Statutes, are amended, present subsections (4) and (5), present subsections (6) through (28), and present subsections (29) through (39) are renumbered as subsections (7) and (8), subsections (10) through (32), and subsections (35) through (45), respectively, new subsections (4), (5), (6), (9),

(33), and (34) are added to that section, to read:

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

(4) "Certificate of compliance" means a certificate that is issued by a credentialing entity to a recovery residence or a recovery residence administrator.

(5) "Certified recovery residence" means a recovery residence that holds a valid certificate of compliance or that is actively managed by a certified recovery residence administrator.

(6) "Certified recovery residence administrator" means a recovery residence administrator who holds a valid certificate of compliance.

(9) "Credentialing entity" means a nonprofit organization that develops and administers professional, facility, or organization certification programs according to applicable nationally recognized certification or psychometric standards.

(11) ~~(7)~~ "Director" means the chief administrative or executive officer of a service provider or recovery residence.

(33) "Recovery residence" means a residential dwelling unit, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

(34) "Recovery residence administrator" means the person responsible for the overall management of the recovery residence, including, but not limited to, the supervision of residents and staff employed by, or volunteering for, the

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residence.

(38) ~~(32)~~ "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 (22) ~~(18)~~.

Section 2. Section 397.487, Florida Statutes, is created to read:

397.487 Voluntary certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary certification program for recovery residences. The approved credentialing entity shall:

(a) Establish recovery residence certification requirements.

(b) Establish procedures to:

1. Administer the application, certification, recertification, and disciplinary processes.

2. Monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements.

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3. Interview and evaluate residents, employees, and volunteer staff on their knowledge and application of certification requirements.

(c) Provide training for owners, managers, and staff.

(d) Develop a code of ethics.

(e) Establish application, inspection, and annual certification renewal fees. The application fee may not exceed $100. Any onsite inspection fee shall reflect actual costs for inspections. The annual certification renewal fee may not exceed $100.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(a) A policy and procedures manual containing:

1. Job descriptions for all staff positions.

2. Drug-testing procedures and requirements.

3. A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.

4. Policies to support a resident’s recovery efforts.

5. A good neighbor policy to address neighborhood concerns and complaints.

(b) Rules for residents.

(c) Copies of all forms provided to residents.

(d) Intake procedures.

(e) Relapse policy.

(f) Fee schedule.

(g) Refund policy.

(h) Eviction procedures and policy.

(i) Code of ethics.

(j) Proof of insurance.

(k) Proof of background screening.

(l) Proof of satisfactory fire, safety, and health inspections.

(4) Upon receiving a completed application and fee, a credentialing entity shall conduct an onsite inspection of the recovery residence.

(5) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435. The department shall notify the credentialing entity of the results of the background screenings. A credentialing entity shall deny a recovery residence's application if any owner, director, or chief financial officer has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense listed in s. 435.04(2), unless the department has issued an exemption under s. 397.4872.

(6) A credentialing entity shall issue a certificate of compliance upon approval of the recovery residence's application and inspection. The certification shall automatically terminate 1 year after issuance if not renewed.

(7) Onsite followup monitoring of any certified recovery residence may be conducted by the credentialing entity to determine continuing compliance with certification requirements. The credentialing entity shall inspect each certified recovery residence at least annually to ensure compliance.

(a) A credentialing entity may suspend or revoke a certificate of compliance if the recovery residence is not in

compliance with any provision of this section or has failed to remedy any deficiency identified by the credentialing entity within the time period specified.

(b) If any owner, director, or chief financial officer of a certified recovery residence is arrested or found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense listed in s. 435.04(2), while acting in that capacity, the certified recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after such removal. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to meet these requirements.

(c) A credentialing entity shall revoke a recovery residence's certificate of compliance if the recovery residence provides false or misleading information to the credentialing entity at any time.

(8) A person may not advertise to the public, in any way or by any medium whatsoever, any recovery residence as a "certified recovery residence" unless such recovery residence has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 397.4871, Florida Statutes, is created to read:

397.4871 Recovery residence administrator certification.—

(1) It is the intent of the Legislature that a recovery residence administrator voluntarily earn and maintain certification from a credentialing entity approved by the

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Department of Children and Families. The Legislature further intends that certification ensure that an administrator has the competencies necessary to appropriately respond to the needs of residents, to maintain residence standards, and to meet residence certification requirements.

(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(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 according to nationally recognized certification and psychometric standards.

(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.

(3) A credentialing entity shall establish a certification program that:

(a) Is established according to nationally recognized

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certification and psychometric standards.

(b) Is directly related to the core competencies.

(c) Establishes minimum requirements in each of the following categories:

1. Training.

2. On-the-job work experience.

3. Supervision.

4. Testing.

5. Biennial continuing education.

(d) Requires adherence to a code of ethics and provides for a disciplinary process that applies to certified persons.

(e) Approves qualified training entities that provide precertification training to applicants and continuing education to certified recovery residence administrators. To avoid a conflict of interest, a credentialing entity or its affiliate may not deliver training to an applicant or continuing education to a certificateholder.

(4) A credentialing entity shall establish application, examination, and certification fees and an annual certification renewal fee. The application, examination, and certification fees may not exceed $225. The annual certification renewal fee may not exceed $100.

(5) All applicants are subject to level 2 background screening as provided under chapter 435. The department shall notify the credentialing entity of the results of the background screenings. A credentialing entity shall deny a person’s application if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense listed in s. 435.04(2),


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unless the department has issued an exemption under s. 397.4872.

(6) The credentialing entity shall issue a certificate of compliance upon approval of a person's application. The certification shall automatically terminate 1 year after issuance if not renewed.

(a) A credentialing entity may suspend or revoke the recovery residence administrator's certificate of compliance if the recovery residence administrator fails to adhere to the continuing education requirements.

(b) If a certified recovery residence administrator of a recovery residence is arrested or found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense listed in s. 435.04(2), the recovery residence shall immediately remove the recovery residence administrator from that position and shall notify the credentialing entity within 3 business days after such removal. The recovery residence shall have 30 days to retain a certified recovery residence administrator. The credentialing entity shall revoke the certificate of compliance of any recovery residence which fails to meet these requirements.

(c) A credentialing entity shall revoke a recovery residence administrator's certificate of compliance if the recovery residence administrator provides false or misleading information to the credentialing entity at any time.

(7) A person may not advertise himself or herself to the public, in any way or by any medium whatsoever, as a "certified recovery residence administrator" unless he or she has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first

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degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A certified recovery residence administrator may qualify a recovery residence for referrals under s. 397.407(11) if the certified recovery residence administrator:

(a) Registers with the credentialing entity the recovery residence he or she intends to qualify. The registration shall include:

1. The name and address of the recovery residence, including the fictitious name, if any, under which the recovery residence is doing business.

2. The name of the owners and any officers of the recovery residence.

(b) Submits an affidavit attesting that he or she is actively managing the recovery residence and that he or she is not utilizing his or her recovery residence administrator's certificate of compliance to qualify any additional recovery residences under this subsection.

(9) A certified recovery residence administrator must notify the credentialing entity within 3 business days after the termination of the certified recovery residence administrator's qualification of the recovery residence due to resignation or any other reason.

(10) A certified recovery residence administrator may act as a qualifying agent for only one recovery residence at any given time.

Section 4. Section 397.4872, Florida Statutes, is created to read:

397.4872 Exemption from disqualification; publication.—

(1) Individual exemptions from staff disqualification or

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administrator ineligibility may be requested if a recovery residence deems the decision will benefit the program. Requests for exemptions shall be submitted in writing to the department and include a justification for the exemption.

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

(a) Sexual predator pursuant to s. 775.21;

(b) Career offender pursuant to s. 775.261; or

(c) Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

(3) By April 1, 2016, a credentialing entity shall submit a list to the department of all recovery residences and recovery residence administrators certified by the credentialing entity which hold a valid certificate of compliance. Thereafter, the credentialing entity must notify the department within 3 business days after a new recovery residence or recovery residence administrator is certified or a recovery residence's or recovery residence administrator's certificate expires or is terminated. The department shall publish on its website a list of all recovery residences that hold a valid certificate of compliance or that have been qualified pursuant to s. 397.4871(10). The department shall also publish on its website a list of all recovery residence administrators that hold a valid certificate of compliance. A recovery residence or recovery


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residence administrator shall be excluded from the list if the recovery residence administrator submits a written request to the department.

Section 5. Subsections (1) and (5) of section 397.407, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

397.407 Licensure process; fees.—

(1) The department shall establish by rule the licensure process to include fees and categories of licenses. The rule must prescribe a fee range that is based, at least in part, on the number and complexity of programs listed in s. 397.311(22) ~~397.311(18)~~ 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 by rule 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. During adoption of the rule governing the licensure process and fees, the department shall carefully consider the potential adverse impact on small, not-for-profit service providers.

(5) The department may issue probationary, regular, and interim licenses. After adopting the rule governing the licensure process and fees, the department shall issue one license for each service component that is operated by a service provider and defined in rule pursuant to s. 397.311(22) ~~397.311(18)~~. 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

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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.

(11) Effective July 1, 2016, a service provider licensed under this part may not refer a current or discharged patient to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 or is actively managed by a certified recovery residence administrator as provided in s. 397.4871, or both, or is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. For purposes of this subsection, the term "refer" means to inform a patient by any means about the name, address, or other details of the recovery residence. However, this subsection does not require a licensed service provider to refer any patient to a recovery residence.

Section 6. 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,

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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,

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"stabilization" means stabilization as defined in s. 397.311(41) ~~397.311(35)~~. 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 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 7. 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

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services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(22)(a)4. ~~397.311(18)(a)4.~~, 397.311(22)(a)1. ~~397.311(18)(a)1.~~, and 394.455(26), respectively.

Section 8. 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(22) ~~397.311(18)~~ 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 9. 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(30) ~~397.311(26)~~.

Section 10. 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(39) ~~397.311(33)~~, that provides confidential, timely, and expert identification,

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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(39) ~~397.311(33)~~.

Section 11. This act shall take effect July 1, 2015.

========== 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 substance abuse services; amending s. 397.311, F.S.; providing definitions; conforming a cross-reference; creating s. 397.487, F.S.; providing legislative findings and intent; requiring the Department of Children and Families to create a voluntary certification program for recovery residences; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to

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establish procedures for certifying recovery residences that meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring a credentialing entity to conduct onsite inspections of a recovery residence; requiring background screening of owners, directors, and chief financial officers of a recovery residence; providing for denial, suspension, or revocation of certification; providing a criminal penalty for falsely advertising a recovery residence as a "certified recovery residence"; creating s. 397.4871, F.S.; providing legislative intent; requiring the department to create a voluntary certification program for recovery residence administrators; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish a process for certifying recovery residence administrators who meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring background screening of applicants for recovery residence administrator certification; providing for denial, suspension, or revocation of certification; providing a criminal penalty for falsely advertising oneself as a "certified recovery residence administrator"; creating s. 397.4872, F.S.; providing exemptions from disqualifying offenses; requiring credentialing entities to provide the


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department with a list of all certified recovery residences and recovery residence administrators by a date certain; requiring the department to publish the list on its website; allowing recovery residences and recovery residence administrators to be excluded from the list upon written request to the department; amending s. 397.407, F.S.; conforming cross-references; providing conditions for a licensed service provider to refer patients to a certified recovery residence or a recovery residence owned and operated by the licensed service provider; defining the term "refer"; amending ss. 212.055, 394.9085, 397.405, 397.416, and 440.102, F.S.; conforming cross-references; providing an effective date.

By Senator Clemens

27-00296-15 2015326__

A bill to be entitled

An act relating to substance abuse services; amending s. 397.311, F.S.; providing definitions; conforming a cross-reference; creating s. 397.487, F.S.; providing legislative findings and intent; requiring the Department of Children and Families to create a voluntary certification program for recovery residences; requiring the department to approve credentialing entities to develop and administer the certification program; requiring an approved credentialing entity to establish procedures for certifying recovery residences that meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring a credentialing entity to conduct onsite inspections of a recovery residence; requiring background screening of employees of a recovery residence; providing for denial, suspension, or revocation of certification; providing a criminal penalty for falsely advertising a recovery residence as a "certified recovery residence"; creating s. 397.4871, F.S.; providing legislative intent; requiring the department to create a voluntary certification program for recovery residence administrators; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish a process for certifying recovery residence administrators who meet

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certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring background screening of applicants for recovery residence administrator certification; providing for suspension or revocation of certification; providing a criminal penalty for falsely advertising oneself as a "certified recovery residence administrator"; creating s. 397.4872, F.S.; providing exemptions from disqualifying offenses; requiring credentialing entities to provide the department with a list of all certified recovery residences and recovery residence administrators by a date certain; requiring the department to publish the list on its website; allowing recovery residences and recovery residence administrators to be excluded from the list upon written request to the department; amending s. 397.407, F.S.; providing conditions for a licensed service provider to refer patients to a certified recovery residence or a recovery residence owned and operated by the licensed service provider; defining the term "refer"; conforming cross-references; amending ss. 212.055, 394.9085, 397.405, 397.416, and 440.102, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsection (32) of section 397.311, Florida Statutes, is amended, present subsections (4) and (5),

present subsections (6) through (28), and present subsections (29) through (39) are renumbered as subsections (7) and (8), subsections (10) through (32), and subsections (35) through (45), respectively, and new subsections (4), (5), (6), (9), (33), and (34) are added to that section, to read:

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

(4) "Certificate of compliance" means a certificate that is issued by a credentialing entity to a recovery residence or a recovery residence administrator.

(5) "Certified recovery residence" means a recovery residence that holds a valid certificate of compliance or that is actively managed by a certified recovery residence administrator.

(6) "Certified recovery residence administrator" means a recovery residence administrator who holds a valid certificate of compliance.

(9) "Credentialing entity" means a nonprofit organization that develops and administers professional certification programs according to nationally recognized certification and psychometric standards.

(33) "Recovery residence" means a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

(34) "Recovery residence administrator" means the person responsible for overall management of the recovery residence,

including the supervision of residents and staff employed by, or volunteering for, the residence.

(38)~~(32)~~ "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 (22) ~~(18)~~.

Section 2. Section 397.487, Florida Statutes, is created to read:

397.487 Voluntary certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(2) The department shall approve one or more credentialing entities for the purpose of developing and administering a voluntary certification program for recovery residences. The approved credentialing entity shall:

(a) Establish recovery residence certification requirements.

(b) Establish procedures to:

1. Administer the application, certification, recertification, and disciplinary processes.

2. Monitor and inspect a recovery residence and its staff

to ensure compliance with certification requirements.

3. Interview and evaluate residents, employees, and volunteer staff on their knowledge and application of certification requirements.

(c) Provide training for owners, managers, and staff.

(d) Develop a code of ethics.

(e) Establish application, inspection, and annual certification renewal fees. The application fee may not exceed $100. The inspection fee shall reflect actual costs for inspections. The annual certification renewal fee may not exceed $100.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(a) A policy and procedures manual containing:

1. Job descriptions for all staff positions.

2. Drug-testing procedures and requirements.

3. A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.

4. Policies to support a resident's recovery efforts.

5. A good neighbor policy to address neighborhood concerns and complaints.

(b) Rules for residents.

(c) Copies of all forms provided to residents.

(d) Intake procedures.

(e) Relapse policy.

(f) Fee schedule.

(g) Refund policy.

(h) Eviction procedures and policy.

(i) Code of ethics.

(j) Proof of insurance requirements.

(k) Background screening requirements.

(l) Requirements for proof of satisfactory fire, safety, and health inspections.

(4) A credentialing entity shall conduct an onsite inspection of the recovery residence before issuing a certificate of compliance. Onsite followup monitoring of a certified recovery residence may be conducted by the credentialing entity to determine continuing compliance with certification requirements. Each certified recovery residence shall be inspected at least once during each certification renewal period to ensure compliance.

(5) A credentialing entity shall require that all employees of a recovery residence pass a level 2 background screening as provided in s. 435.04. The employee's fingerprints shall be submitted by the department, an entity, or a vendor as authorized by s. 943.053(13)(a). The fingerprints shall be forwarded to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward them to the Federal Bureau of Investigation for national processing. Fees for state and national fingerprint processing shall be borne by the employer or employee. The department shall screen background results to determine whether an employee meets certification requirements.

(6) A credentialing entity shall issue a certificate of compliance upon approval of the recovery residence's application and inspection. The certification shall automatically terminate

if not renewed within 1 year after the date of issuance.

(7) A credentialing entity shall deny a recovery residence's application for certification, and may suspend or revoke a certification, if the recovery residence:

(a) Is not in compliance with any provision of this section;

(b) Has failed to remedy any deficiency identified by the credentialing entity within the time period specified;

(c) Provided false, misleading, or incomplete information to the credentialing entity; or

(d) Has employees who are subject to the disqualifying offenses set forth in s. 435.04(2), unless an exemption has been provided under s. 397.4872.

(8) A person may not advertise to the public, in any way or by any medium whatsoever, any recovery residence as a "certified recovery residence" unless such recovery residence has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 397.4871, Florida Statutes, is created to read:

397.4871 Recovery residence administrator certification.—

(1) It is the intent of the Legislature that a recovery residence administrator voluntarily earn and maintain certification from a credentialing entity approved by the Department of Children and Families. The Legislature further intends that certification ensure that an administrator has the competencies necessary to appropriately respond to the needs of residents, to maintain residence standards, and to meet

residence certification requirements.

(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(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 according to nationally recognized certification and psychometric standards.

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

(c) Demonstrate ability to 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.

(3) A credentialing entity shall establish a certification program that:

(a) Is established according to nationally recognized certification and psychometric standards.

(b) Is directly related to the core competencies.

(c) Establishes minimum requirements in each of the following categories:

1. Training.

2. On-the-job work experience.

3. Supervision.

4. Testing.

5. Biennial continuing education.

(d) Requires adherence to a code of ethics and provides for a disciplinary process that applies to certified persons.

(e) Approves qualified training entities that provide precertification training to applicants and continuing education to certified recovery residence administrators. To avoid a conflict of interest, a credentialing entity or its affiliate may not deliver training to an applicant or continuing education to a certificateholder.

(4) A credentialing entity shall require each applicant to pass a level 2 background screening as provided in s. 435.04. The applicant's fingerprints shall be submitted by the department, an entity, or a vendor as authorized by s. 943.053(13)(a). The fingerprints shall be forwarded to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward them to the Federal Bureau of Investigation for national processing. Fees for state and national fingerprint processing shall be borne by the applicant. The department shall screen background results to determine whether an applicant meets certification requirements.

(5) A credentialing entity shall establish application, examination, and certification fees and an annual certification renewal fee. The application, examination, and certification fee may not exceed $225. The annual certification renewal fee may not exceed $100.

(6) The credentialing entity shall issue a certificate of compliance upon approval of a person's application. The certification shall automatically terminate if not renewed within 1 year after the date of issuance.

(7) A person who is subject to the disqualifying offenses set forth in s. 435.04(2) is ineligible to become a certified recovery residency administrator.

(8) A credentialing entity may suspend or revoke the recovery residence administrator's certificate of compliance if the recovery residence administrator:

(a) Fails to adhere to the continuing education requirements; or

(b) Becomes subject to the disqualifying offenses set forth in s. 435.04(2), unless an exemption has been provided under s. 397.4872.

(9) A person may not advertise himself or herself to the public, in any way or by any medium whatsoever, as a "certified recovery residence administrator" unless he or she has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. Section 397.4872, Florida Statutes, is created to read:

397.4872 Exemption from disqualification; publication.—

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

(2) The department may exempt a person from ss. 397.487(7)(d) and 397.4871(7) if it has been at least 3 years since the person completed or was lawfully released from confinement, supervision, or sanction for the disqualifying offense. An exemption from the disqualifying offenses may not be given under any circumstances for any person who is designated as a:

(a) Sexual predator pursuant to s. 775.21;

(b) Career offender pursuant to s. 775.261; or

(c) Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

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

Section 5. Subsections (1) and (5) of section 397.407, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

397.407 Licensure process; fees.—

(1) The department shall establish by rule the licensure process to include fees and categories of licenses. The rule must prescribe a fee range that is based, at least in part, on the number and complexity of programs listed in s. 397.311(22) ~~s. 397.311(18)~~ 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 by rule 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. During adoption of the rule governing the licensure process and fees, the department shall carefully consider the potential adverse impact on small, not-for-profit service providers.

(5) The department may issue probationary, regular, and interim licenses. After adopting the rule governing the licensure process and fees, the department shall issue one license for each service component that is operated by a service provider and defined in rule pursuant to s. 397.311(22) ~~s. 397.311(18)~~. 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.

(11) Effective July 1, 2016, a service provider licensed under this part may not refer a current or discharged patient to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487, is actively managed by a certified recovery residence administrator as provided in s. 397.4871, or both, or is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. For purposes of this subsection, the term "refer" means to inform a patient by any means about the name, address, or other details of the recovery residence. However, this subsection does not require a licensed service provider to refer any patient to a recovery residence.

Section 6. 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(41) ~~s. 397.311(35)~~. 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 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 7. 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(22)(a)4. ~~ss. 397.311(18)(a)4.~~, 397.311(22)(a)1. ~~397.311(18)(a)1.~~, and 394.455(26), respectively.

Section 8. 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(22) ~~s. 397.311(18)~~ 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 9. 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(30) ~~s. 397.311(26)~~.

Section 10. 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(39) ~~s. 397.311(33)~~, 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(39) ~~s. 397.311(33)~~.

Section 11. This act shall take effect July 1, 2015.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 340
INTRODUCER:	Senator Grimsley
SUBJECT:	Crisis Stabilization Services
DATE:	February 9, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Pre-meeting**
2.			AHS	
3.			AP	

I. Summary:

SB 340 directs the Department of Children and Families (DCF) to develop, implement, and maintain standards for behavioral health managing entities[1] to collect utilization data from public receiving facilities that are operating crisis stabilization units where emergency mental health care is provided. Managing entities must comply with the bill's requirements for data collection by August 1, 2015.

The bill requires managing entities to collect specified utilization data in real time or at least daily. Managing entities must perform reconciliations monthly and annually to ensure data accuracy. After ensuring data accuracy, managing entities must submit data to the DCF on a monthly and annual basis. The DCF is required to create a statewide database for the purpose of analyzing the payments for and the use of state-funded crisis stabilization services on a statewide basis and on an individual public receiving facility basis.

The bill requires the DCF to adopt rules and submit a report by January 31, 2016, and annually thereafter, to the governor, the president of the Senate, and the speaker of the House of Representatives with details on the bill's implementation and an analysis of the data collected.

Implementation of the bill is subject to specific appropriations provided to the DCF in the General Appropriations Act and is effective upon become law.

[1] *See* s. 394.9082, F.S. A managing entity is a not-for-profit corporation organized in Florida and 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.

II. Present Situation:

Individuals experiencing severe emotional or behavioral problems often require emergency treatment to stabilize their situations before referral for outpatient services or inpatient services can occur. Emergency mental health stabilization services may be provided to voluntary or involuntary patients. Involuntary patients must be taken to one of the state's designated "receiving facilities." Receiving facilities are defined by the Florida Mental Health Act (ss. 394.451 – 394.4789, F.S.) and are often referred to as Baker Act Receiving Facilities.[2]

The Florida Legislature enacted the Florida Mental Health Act in 1971 to revise the state's mental health commitment laws. The Act substantially strengthened the due process and civil rights of persons in mental health facilities and those alleged to be in need of emergency evaluation and treatment. A major intent of the Act was to increase community care of persons with mental illnesses.[3]

The purpose of receiving facilities is to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. Law enforcement officers usually transport individuals requiring involuntary Baker Act examinations to the nearest receiving facility.[4] However, involuntary examinations may be initiated by a court order, a certificate executed by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker or by self-presentation.[5] A facility must accept individuals brought by a law enforcement officer for involuntary examination, regardless of bed availability.[6]

Receiving facilities may be either public or private but only facilities that have a contract with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and that are receiving state funds for this purpose, are considered public receiving facilities.[7] Transfer of individuals between two public facilities, from a public facility to a private facility, and from a private facility to a public facility is permitted.[8] Funds appropriated for Baker Act services only may pay for services to diagnostically and financially-eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalizations for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit for short-term services persons brought to the unit under the Baker Act as well as those who present themselves for services.[9] CSUs provide services 24 hours a day, seven days a week, through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people

[2] Section 394.455(25) (26), F.S.
[3] Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011).
[4] *Id.*
[5] Section 394.4655(2), F.S.
[6] Section 394.462, F.S.
[7] Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011).
[8] Section 394.4685, F.S.
[9] Section 394.875, F.S.

to the most appropriate and least restrictive treatment settings, consistent with their mental health needs. Individuals often enter the public mental health system through CSUs.[10]

Managing entities have assumed the responsibility for purchasing, managing, and monitoring behavioral health services in the state. The DCF's contracts with the managing entities are required to include payment methods that promote flexibility, efficiency, and accountability. Managing entities must follow current statutes and rules that require CSUs be paid for bed availability rather than utilization by clients.

For fiscal year 2014-2015, $76.8 million is provided for CSUs, Baker Act, and Inpatient Crisis Services.[11] As of February 6, 2015, there were 63 public receiving facilities with 2,052 beds and 67 private receiving facilities with 3,371 beds.[12] Based on the Florida Mental Health Institute's Annual Report of Baker Act Data Summary for 2013, there were 171,744 involuntary examinations initiated in Florida.[13]

III. Effect of Proposed Changes:

Section 1 amends s. 394.9082, F.S., by creating a new subsection (10). The bill directs the DCF to develop, implement, and maintain standards under which a behavioral health managing entity must collect utilization data from all public receiving facilities within its geographic service area. For those purposes, the bill defines "public receiving facility" as an entity that meets the licensure requirements of and is designated by the DCF to operate as a public receiving facility under s. 394.875, F.S., and which is operating as a licensed crisis stabilization unit.

The bill requires the DCF to develop standards for managing entities and public receiving facilities to be used for data collection, storage, transmittal, and analysis. The standards must allow for compatibility of data and data transmittal. The DCF must require managing entities to comply with the bill's requirements for data collection by August 1, 2015.

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

- All admissions and discharges of clients receiving public receiving facility services who qualify as indigent as defined in s. 394.4787, F.S.; and
- Current active census of total licensed beds, the number of beds purchased by the DCF, the number of clients qualifying as indigent occupying those beds, and the total number of unoccupied licensed beds regardless of funding.

A managing entity must require a public receiving facility within its provider network to submit data on a monthly basis which aggregates the daily data previously submitted. The managing entity must reconcile the data in the monthly submission to the daily data to check for consistency. If the monthly aggregate data is inconsistent with the daily data, the managing entity

[10] Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011).
[11] Information received from the Department of Children and Families on February 10, 2015.
[12] *Id.*
[13] Christy, A. (2014). Report of 2013 Baker Act Data. Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute.

must consult with the public receiving facility to make corrections as necessary to ensure accurate data.

A managing entity must require a public receiving facility within its provider network to submit data on an annual basis which aggregates the monthly data previously submitted and reconciled. The managing entity must reconcile the data in the annual submission to the monthly data to check for consistency. If the annual aggregate data is inconsistent with the reconciled monthly data, the managing entity must consult with the public receiving facility to make corrections as necessary to ensure accurate data.

After ensuring accurate data, the managing entity must submit the data to the DCF on a monthly and annual basis. The DCF is required to create a statewide database 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.

The DCF is required to adopt rules to administer the bill's provisions. The DCF is required to submit a report by January 31, 2016, and annually thereafter, to the governor, the president of the Senate, and the speaker of the House of Representatives which provides details on the bill's implementation, including the status of the data collection process and a detailed analysis of the data collected.

The bill's implementation is subject to specific appropriations provided to the DCF under the General Appropriations Act.

Section 2 provides that 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.

B. Private Sector Impact:

Public receiving facilities and managing entities may experience an indeterminate amount of costs to submit and reconcile data under the parameters created by this bill.

C. Government Sector Impact:

The Department of Children and Families (DCF) may experience an indeterminate amount of costs for establishing and maintaining the statewide database under the requirements and parameters of the bill. However, the bill provides that those provisions will be implemented subject to specific appropriations in the General Appropriations Act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 394.9082 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 Grimsley

21-00441-15 2015340__

A bill to be entitled

An act relating to crisis stabilization services; amending s. 394.9082, F.S.; requiring the Department of Children and Families to develop standards and protocols for the collection, storage, transmittal, and analysis of utilization data from public receiving facilities; defining the term "public receiving facility"; requiring the department to require compliance by managing entities by a specified date; requiring a managing entity to require public receiving facilities in its provider network to submit certain data within specified timeframes; requiring managing entities to reconcile data to ensure accuracy; requiring managing entities to submit certain data to the department within specified timeframes; requiring the department to create a statewide database; requiring the department to adopt rules; requiring the department to submit an annual report to the Governor and the Legislature; providing that implementation is subject to specific appropriations; providing an effective date.

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

Section 1. Present subsections (10) and (11) of section 394.9082, Florida Statutes, are renumbered as subsections (11) and (12), respectively, and a new subsection (10) is added to that section, to read:

394.9082 Behavioral health managing entities.—

21-00441-15 2015340__

(10) 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 use in the collection, storage, transmittal, and analysis of data. 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. The department shall require managing entities contracted under this section to comply with this subsection by August 1, 2015.

(b) A managing entity shall require a public receiving facility within its provider network to submit data to the managing entity, in real time or at least daily, 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. Current active census of total licensed beds, the number of beds purchased by the department, the number of clients qualifying as indigent occupying 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 is inconsistent with the daily data submitted under paragraph (b), the managing entity shall consult with the public receiving facility to make corrections as 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 is inconsistent with the data received and reconciled under paragraph (c), the managing entity shall consult with the public receiving facility to make corrections as necessary to ensure accurate data.

(e) After ensuring accurate data under 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.

(f) The department shall adopt rules to administer this subsection.

(g) The department shall submit a report by January 31, 2016, and annually thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides details on the implementation of this subsection, including the status of the data collection process and a detailed analysis of the data collected under this subsection.

(h) The implementation of this subsection is subject to specific appropriations provided to the department under the General Appropriations Act.

Section 2. 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 Children, Families, and Elder Affairs

BILL:	SB 360
INTRODUCER:	Senator Stargel
SUBJECT:	Public Records/Claim Settlement on Behalf of a Ward or Minor
DATE:	February 4, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Pre-meeting**
2.			GO	
3.			RC	

I. Summary:

SB 360 amends the law relating to guardianship to provide that the petition requesting permission for settlement of a ward's or minor's claim, the order on the petition, and any document associated with the settlement, are confidential and exempt from the public records requirements in ch. 744, F.S., in order to protect minors, wards, and others who could be at risk upon disclosure of a settlement. The court may order partial or full disclosure of the confidential and exempt record to specified individuals upon a showing of good cause. The bill provides a statement of public necessity as required by the State Constitution.

The bill is anticipated to have an insignificant fiscal impact on government.

The bill has an effective date of the same date as an unspecified Senate Bill or similar legislation takes effect if such legislation is adopted in the same legislative session.

II. Present Situation:

Settlements in Guardianship Cases

Litigation settlement agreements routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable.

However, a minor cannot settle a case valued in excess of $15,000 without court approval.[1] The court approval process requires a petition setting forth the terms of the settlement and an order is eventually entered that also may contain the terms of settlement, or may refer to the petition.[2]

[1] Section 744.301(2), F.S.

[2] Section 744.387, F.S.

The petition and the order are part of a court file, and therefore, are a matter of public record and open for inspection under current law.

Public Records Requirements

The Florida Constitution specifies requirements for public access to government records. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[3] The records of the legislative, executive, and judicial branches are specifically included.[4]

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. Chapter 119. F.S., guarantees every person's right to inspect and copy any state or local government public record[5] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[6]

Only the Legislature may create an exemption to public records requirements.[7] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[8] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[9] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[10]

[3] FLA. CONST. art. I, s. 24(a).
[4] *Id*.
[5] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." Chapter 119, F.S., does not apply to legislative or judicial records. See *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).
[6] Section 119.07(1)(a), F.S.
[77] FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).
[8] FLA. CONST. art. I, s. 24(c).
[9] The bill, however, may contain multiple exemptions that relate to one subject.
[10] 11 FLA. CONST. art. I, s. 24(c).

Court Records

Florida courts have consistently held that the judiciary is not an "agency" for purposes of ch. 119, F.S.[11] However, the Florida Supreme Court found that "both civil and criminal proceedings in Florida are public events" and that the court will "adhere to the well-established common law right of access to court proceedings and records."[12] There is a Florida constitutional guarantee of access to judicial records.[13] The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the legislature in accordance with the Constitution.[14]

III. Effect of Proposed Changes:

Section 1 amends s. 744.3701, F.S., to provide that any court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Because the record is made confidential and exempt, it may not be disclosed except as provided in law. Current law allows the court, the clerk of court, the guardian, the guardian's attorney, the ward, unless the ward is a minor or has been determined to be totally incapacitated, and the ward's attorney to review the guardianship court file. The bill amends s. 744.3701, F.S., to provide that the guardianship report or any court record relating to the settlement of a claim may also be disclosed to the guardian ad litem, if one has been appointed, related to the settlement, to the ward if he or she is 14 years of age or older and has not been declared totally incapacitated, the minor if he or she is at least 14 years of age, and to the attorney representing the minor. The record may also be disclosed as ordered by the court.

Section 2 provides a statement of public necessity as required by the Florida Constitution. The bill states that it is a public necessity to keep confidential and exempt from public disclosure information contained in a settlement record which could be used to identify a minor or ward. The information contained in these records is of a sensitive, personal nature and its disclosure could jeopardize the physical safety and financial security of the minor or ward. In order to protect minors, wards, and others who could be at risk upon disclosure of a settlement, it is necessary to ensure that only those interested persons who are involved in settlement proceedings or the administration of the guardianship have access to reports and records.

Section 3 provides that it shall take effect on the same date as an unspecified Senate Bill or similar legislation takes effect if such legislation is adopted in the same session.

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[11] See e.g., *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995).
[12] *See Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 116 (Fla. 1988).
[13] FLA. CONST. art. I, s. 24(a).
[14] FLA. CONST. art. I, ss. 24(c) and (d).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to certain settlements and therefore **it requires a two-thirds vote for final passage.**

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to certain settlements and is required to include a public necessity statement.

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption related to certain settlements. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An increase in judicial workload potentially may occur due to the new obligation on the court to determine whether good cause is shown to permit disclosure of court records relating to settlement of a claim on behalf of a minor or ward, and to determine whether disclosure and recording of such records is warranted in relation to a real property transaction, or for such other purposes as the court allows. The potential increase cannot be quantified at this time.[15]

[15] At the time of publication of this analysis, Senate professional staff did not have a copy of the 2014 Judicial Impact Statement for SB 360. This information is taken from the 2013 Judicial Impact Statement for SB 610, which was

The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial workload resulting from the new obligation on the court to determine whether good cause is shown to permit disclosure of court records relating to settlement of a claim on behalf of a minor or ward, and to determine whether disclosure and recording of such records is warranted in relation to a real property transactions, or for such other purposes as the court allows.[16]

VI. Technical Deficiencies:

The bill does not specify a bill number for the linked bill.

VII. Related Issues:

Lines 22-25 of the bill, expand a public record exemption related to guardianships to include court records relating to the settlement of a ward's or minor's claim. However, **lines 53-55** of the bill, refer to the need to protect information contained in the court record that could be used to identify a minor or ward. As a result, it is unclear whether the intent is to protect the entire court record or the identifying information contained in those records.

VIII. Statutes Affected:

This bill substantially amends the following s. 744.3701 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.

substantively similar to SB 360. See Office of the State Courts Administrator *2013 Judicial Impact Statement*, SB 610 (Mar. 4, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).

[16] *Id*.

LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

Senate Amendment

Delete lines 52 - 55

and insert:

Section 2. The Legislature finds that it is a public necessity that a court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, be made confidential

and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. The information contained in these

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LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

Senate Amendment

Delete line 66

and insert:

SB 366 or similar legislation takes effect if such legislation

By Senator Stargel

15-00281-15 2015360__

A bill to be entitled

An act relating to public records; amending s. 744.3701, F.S.; providing an exemption from public records requirements for records relating to the settlement of a claim on behalf of a ward or minor; authorizing a guardian ad litem, a ward, a minor, and a minor's attorney to inspect guardianship reports and court records relating to the settlement of a claim on behalf of a ward or minor upon a showing of good cause; authorizing the court to direct disclosure and recording of an amendment to a report or court records relating to the settlement of a claim on behalf of a ward or minor, in connection with real property or for other purposes; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 744.3701, Florida Statutes, is amended to read:

744.3701 Confidentiality ~~Inspection of report~~.—

(1) Unless otherwise ordered by the court, upon a showing of good cause, an ~~any~~ initial, annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim, is subject to inspection only by the court~~;~~, ~~the~~ the clerk or the clerk's representative~~;~~, ~~the~~ the guardian and the guardian's attorney; with respect to the settlement of the claim, the guardian ad litem~~;~~, ~~and~~ the ward, if~~, unless~~ he or she is at least 14 years of age and has not ~~a minor or has~~

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been determined to be totally incapacitated, and his or her ~~the ward's~~ attorney; and the minor, if he or she is at least 14 years of age, and the attorney representing the minor with respect to his or her claim, or as otherwise provided by this chapter.

(2) The court may direct disclosure and recording of parts of an initial, annual, or final report or amendment thereto, or a court record relating to the settlement of a claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, in connection with a ~~any~~ real property transaction or for such other purpose as the court allows~~, in its discretion~~.

(3) A court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor; a report of a guardian ad litem relating to a pending settlement; or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Section 2. The Legislature finds that it is a public necessity to keep confidential and exempt from public disclosure information contained in a settlement record which could be used to identify a ward or minor. The information contained in these records is of a sensitive, personal nature, and its disclosure could jeopardize the physical safety and financial security of the minor or ward. In order to protect minors, wards, and others

who could be at risk upon disclosure of a settlement, it is necessary to ensure that only those interested persons who are involved in settlement proceedings or the administration of the guardianship have access to reports and records. The Legislature finds that the court retaining discretion to direct disclosure of these records is a fair alternative to public access.

Section 3. This act shall take effect on the same date that SB ____ or similar legislation takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes 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 Children, Families, and Elder Affairs

BILL:	SB 496
INTRODUCER:	Senator Detert
SUBJECT:	Guardians for Dependent Children who are Developmentally Disabled or Incapacitated
DATE:	February 17, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Pre-meeting**
2.			JU	
3.			AP	

I. Summary:

SB 496 creates a process to identify guardians and guardian advocates for children with developmental disabilities or incapacity and are in need of guardianship beyond their 18th birthday. The bill requires the Department of Children and Families (DCF) to create updated case plans developed in face-to-face conferences with a child and other specified persons, when appropriate. When the dependence court determines the child may have a developmental disability or incapacity, DCF is required to complete a multidisciplinary report, identify one or more individuals who are willing to serve as guardian advocate or as a plenary or limited guardian and initiate such proceedings within 180 days of the child's 17th birthday.

The bill authorizes the probate court to initiate proceedings for the minor and provide all due process rights conferred upon an adult. It also allows the child's parents to be considered as natural guardians unless the dependency or probate court determines it is not in the child's best interest or the parents' rights have been terminated.

The bill would have a significant fiscal impact on state government, requiring the staffing, training and support of DCF attorneys to initiate guardianship proceedings in probate court. Miscellaneous litigation fees such as filing fees, expert witnesses, service of process fees and in some cases fees for notices to be published in newspapers will be required.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

When a minor[1] with developmental disabilities or some level of incapacity ages out of the dependency system, there is a gap between the time he or she turns 18 years of age and the time

[1] Any person who has not attained the age of 18 years, s. 1.01(13), F.S.

a guardian advocate, plenary guardian, or limited guardian is appointed. This creates a period in which the individual who may be in need of a guardian is considered an adult but is likely unable to adequately make decisions for oneself. Two separate issues create this gap. First, the lack of a procedure within the dependency system to identify adults willing to serve as guardians or guardian advocates for these minors as they reach the age of 18 years of age, and second, a jurisdictional issue in which probate courts only exercise jurisdiction and begin guardianship proceedings after the child reaches 18 years of age. The distinction in statute between adult guardianships and guardianship for minors creates the largest barrier to getting guardians for minors who need them when they turn 18 years of age.

Dependency courts work primarily under ch. 39, F.S., handling cases dealing with abandonment, abuse, and neglect of children. Chapters 731 through 735, 744, and 747, F.S., deal with wills, trusts, estates, guardianships, conservatorships, and other property and succession matters.

The department is required to assist youth 13 to 18 years of age who are in foster care to develop the skills necessary for successful transition to adulthood. The Federal Fostering Connections to Success and Increasing Adoptions Act of 2008 requires DCF within 90 days of the child's 17th birthday to provide the court with an updated case plan that includes specific information related to the independent living skills that the child has required.

January 1, 2014, Florida's law making it possible for young adults with a disability to remain in foster care until age 22 became effective. An average of 60 young adults with developmental disabilities reach 18 years of age annually while in licensed foster care.[2] Some of these young adults reside in supportive housing provided by the Agency for Persons with Disabilities (APD). Unless a court adjudicates the young adult incapacitated and appoints a guardian, the young adult is able to leave APD-licensed housing.

Proceedings through probate court cannot begin until a child turns 18 years of age. Often probate court proceedings can take 6 months or longer before a final order is entered. This creates a gap between the time the child turns 18 and a guardian is appointed. There is a wide range of options to provide decision-making assistance to those with developmental disabilities or other incapacity that are not as restrictive as guardianships.[3] Guardianships that place decision-making authority for property and person with another individual require an examining committee to determine that the alleged incapacitated adult lacks capacity and an adjudication of incapacity is required by a judge.[4] This form of guardianship is considered the most restrictive, and should be a last resort as it removes fundamental and civil rights of an individual.

For adult guardianships, Florida Statutes require an adjudication of incapacity based on the recommendation of an examining committee, the adult must have an attorney appointed to represent them, and the adult must be present at the hearing before a guardian is appointed.[5] For guardianship of a minor, an adjudication of incapacity is not required, and attorney is not

[2] Department of Children and Families, *Senate Bill 496 Analysis* (Jan. 23, 2015) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[3] Florida Developmental Disabilities Council, Inc., *Lighting the Way to Guardianships and Other Decision-Making Alternatives: A Manual for Individuals and Families* (2010).
[4] Section 744.331, F.S.
[5] Section 744.331, F.S.

required, nor is the minor required to be present at the hearing.[6,7] These due process protections for minors are waived because the minor is not an adult and the guardianship of a minor terminates by law upon reaching 18 years of age.

Under current law, probate courts would not entertain a petition for an adult guardianship for a minor. Currently, for minors who have been identified as needing a guardianship as an adult, DCF recruits pro bono attorneys with the required experience to file guardianship petitions in probate court.

III. Effect of Proposed Changes:

Section 1 amends s. 39.701, F.S., to require DCF to develop an updated case plan in a face-to-face conference with a child who may be developmentally disabled or incapacitated and, if appropriate, the child's attorney, any court-appointed guardian ad litem, the temporary custodian of the child and the parent, if the parent's rights have not been terminated.

If the dependency court determines at the first judicial review hearing after the child's 17th birthday that the child may be developmentally disabled or may be incapacitated, DCF is required to:

1. Complete a multidisciplinary report, which must include, but is not limited to, a psychosocial evaluation if one has not been completed within the previous 2 years;
2. Identify one or more individuals who are willing to serve as the guardian advocate, plenary guardian or limited guardian. The child's parents may not be considered unless the court issues a written order finding such an appointment is in the child's best interest; and
3. Initiate proceedings within 180 days of the child's 17th birthday for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child in the court of proper jurisdiction.

In the event another interested party initiates proceedings for the appointment of a guardian advocate, plenary guardian, or limited guardian, the bill requires DCF to provide all necessary documentation and information to the petitioner within 45 days after the first judicial review hearing after the child's 17th birthday.

The bill also specifies that any proceeding seeking appointment of a guardian advocate, plenary guardian, or limited guardian must be conducted in the probate court not the dependency court.

Section 2 amends s. 393.12, F.S., authorizing the probate court to take jurisdiction of a minor who is the subject of a chapter 39 proceeding, and initiate guardianship proceedings once the minor reaches the age of 17 years and 6 months or anytime thereafter. The minor shall be provided all due process rights conferred upon an adult.

[6] Section 744.3021, F.S.
[7] Section 744.342, F.S.

Section 3 amends s. 744.301, F.S., clarifying that if a parent's rights have been terminated they cannot be natural guardians of the minor, but if the minor is the subject of a chapter 39 proceeding, and the parents retain their rights, they can be natural guardians unless the court finds it is not in the child's best interest.

Section 4 amends s.744.3021, F.S., to require minors who are the subject of a chapter 39 proceeding and aged 17 years and 6 months or older be given the same due process rights as an adult. An order of adjudication of incapacity and letters of limited or plenary guardianship may issue upon the minor's 18th birthday or as soon thereafter as possible.

Section 5 creates an effective date of July 1, 2015.

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:

This bill requires DCF to file or initiate guardianship proceedings in probate court for youth who are aging out of foster care and whom the department believes may not be legally competent to handle decisions regarding their person or property. The department estimates it will initiate approximately 90 such proceedings annually.[8] This would cost an estimated $500,000 to $718,000[9] depending on the number and nature of the filings. Of the totals, $23,000 to $35,000 of the expense would be non-recurring.[10] Additionally, the

[8] Department of Children and Families, *Senate Bill 496 Analysis* (on file with the Senate Committee on Children, Families, and Elder Affairs).
[9] *Id.*
[10] *Id.*

costs for psychosocial evaluations, service of process, background screening fees for potential guardians and other case related fees are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39,701, 393.12, 744.301 and 744.3021.

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.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (8) of section 39.6251, Florida Statutes, is amended to read:

39.6251 Continuing care for young adults.—

(8) During the time that a young adult is in care, the court shall maintain jurisdiction to ensure that the department and the lead agencies are providing services and coordinate

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with, and maintain oversight of, other agencies involved in implementing the young adult's case plan, individual education plan, and transition plan. The court shall review the status of the young adult at least every 6 months and hold a permanency review hearing at least annually. If the young adult has been appointed a guardian under chapter 744 or a guardian advocate under s. 393.12, the court shall review at the permanency review hearing the necessity of continuing the guardianship and whether restoration of guardianship proceedings are needed when the child reaches 22 years of age. The court may appoint a guardian ad litem or continue the appointment of a guardian ad litem with the young adult's consent. The young adult or any other party to the dependency case may request an additional hearing or review.

Section 2. Paragraphs (b) and (c) of subsection (3) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

(b) At the first judicial review hearing held subsequent to the child's 17th birthday, the department shall provide the court with an updated case plan that includes specific information related to the independent living skills that the child has acquired since the child's 13th birthday, or since the date the child came into foster care, whichever came later.

1. For any child that may meet the requirements for appointment of a guardian pursuant to chapter 744 or a guardian advocate pursuant to s. 393.12, the updated case plan must be developed in a face-to-face conference with the child, if appropriate; the child's attorney; any court-appointed guardian ad litem; the temporary custodian of the child; and the parent,

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if the parent's rights have not been terminated.

2. At the judicial review hearing, if the court determines pursuant to the procedures and requirements of chapter 744 and the Florida Probate Rules that there is a good faith basis to believe the child qualifies for appointment of a guardian or a guardian advocate and that no less restrictive decisionmaking assistance will meet the child's needs:

a. The department shall complete a multidisciplinary report that must include, but is not limited to, a psychosocial evaluation and educational report if such a report has not been completed within the previous 2 years.

b. The department shall identify one or more individuals who are willing to serve as the guardian advocate pursuant to s. 393.12 or as the plenary guardian or limited guardian pursuant to chapter 744 and the Florida Probate Rules. Any other interested parties or participants may make efforts to identify such a guardian advocate or plenary guardian or limited guardian. A child's biological or adoptive family members, including a child's parents if the parents' rights have not been terminated, may not be considered for service as the plenary guardian or limited guardian unless the court enters a written order finding that such an appointment is in the child's best interests.

c. Proceedings shall be initiated within 180 days after the child's 17th birthday for the appointment of a guardian advocate or plenary guardian or limited guardian for the child in the court with proper jurisdiction over probate matters according to the local rules of judicial administration and the procedures and requirements of chapter 744 and the Florida Probate Rules.

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3. In the event another interested party or participant initiates proceedings for the appointment of a guardian advocate or plenary guardian or limited guardian for the child, the department shall provide all necessary documentation and information to the petitioner to complete a petition under chapter 393 or chapter 744 within 45 days after the first judicial review hearing after the child's 17th birthday.

4. Any proceedings for appointment of a guardian advocate or a determination of incapacity and the appointment of a guardian must be conducted in a separate proceeding in the court with proper jurisdiction over probate matters according to local rules of judicial administration and the procedures and requirements of chapter 744 and the Florida Probate Rules.

(c) If the court finds at the judicial review hearing that the department has not met its obligations to the child as stated in this part, in the written case plan, or in the provision of independent living services, the court may issue an order directing the department to show cause as to why it has not done so. If the department cannot justify its noncompliance, the court may give the department 30 days within which to comply. If the department fails to comply within 30 days, the court may hold the department in contempt.

Section 3. Paragraph (c) is added to subsection (2) of section 393.12, Florida Statutes, to read:

393.12 Capacity; appointment of guardian advocate.—

(2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

(c) If a petition is filed pursuant to this section requesting appointment of a guardian advocate for a minor who is the subject of any proceeding under chapter 39, the court with

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proper jurisdiction over probate matters according to local rules of judicial administration and the Florida Probate Rules shall have jurisdiction over the proceedings pursuant to this section when the minor reaches the age of 17 years and 6 months or anytime thereafter. The minor shall be provided all the due process rights conferred upon an alleged developmentally disabled adult pursuant to this chapter. The order of appointment of guardian advocate under this section shall be issued upon the minor's 18th birthday or as soon thereafter as possible.

Section 4. Subsection (1) of section 744.301, Florida Statutes, is amended to read:

744.301 Natural guardians.—

(1) The parents jointly are the natural guardians of their own children and of their adopted children, during minority, unless the parent's parental rights have been terminated pursuant to chapter 39. If a child is the subject of any proceeding under chapter 39, the parents may act as natural guardians under this section unless the dependency or probate court finds that it is not in the child's best interest. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has been granted, or if the parents have been granted shared parental responsibility, both continue as natural guardians. If the marriage is dissolved and neither parent is given parental responsibility for the child, neither may act as natural guardian of the child. The mother of a child born out of wedlock

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is the natural guardian of the child and is entitled to primary residential care and custody of the child unless the court enters an order stating otherwise.

Section 5. Subsection (1) of section 744.3021, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

744.3021 Guardians of minors.—

(1) Except as provided in subsection (4), upon petition of a parent, brother, sister, next of kin, or other person interested in the welfare of a minor, a guardian for a minor may be appointed by the court without the necessity of adjudication pursuant to s. 744.331. A guardian appointed for a minor, whether of the person or property, has the authority of a plenary guardian.

(4) If a petition is filed pursuant to this section requesting appointment of a guardian for a minor that is the subject of any proceeding under chapter 39 and who is 17 years and 6 months of age or older, the court with proper jurisdiction over probate matters according to local rules of judicial administration and the procedures and requirements of this chapter and the Florida Probate Rules shall have jurisdiction over the proceedings under s. 744.331. The alleged incapacitated minor under this subsection shall be provided all the due process rights conferred upon an alleged incapacitated adult pursuant to this chapter and the Florida Probate Rules. The order of adjudication under s. 744.331 and the letters of limited guardianship or plenary guardianship may be issued upon the minor’s 18th birthday or as soon thereafter as possible.

Section 6. This act shall take effect July 1, 2015.

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========== 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 guardians; amending s. 39.6251, F.S.; requiring the court at the permanency review hearing to review the necessity of the guardianship and whether restoration of guardianship proceedings are needed when the child reaches a certain age under certain circumstances; amending s. 39.701, F.S.; requiring that, for a child meeting certain requirements, the updated case plan be developed in a face-to-face conference with specified persons present; requiring the Department of Children and Families to take specified actions at the judicial review hearing if the court makes certain determinations; requiring the department to provide documentation and information to a petitioner under certain circumstances; requiring certain proceedings to be conducted separately; expanding the circumstances under which a court, after making certain findings, may issue an order directing the department to show cause; amending s. 393.12, F.S.; providing that the court with proper jurisdiction over probate matters has jurisdiction if a specified petition is filed; requiring the provision of due process rights for a minor; requiring the issuance of the order of appointment of guardian advocate upon the


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minor turning 18 years of age or as soon thereafter as possible; amending s. 744.301, F.S.; providing that parents are the joint natural guardians of their children unless their parental rights have been terminated; authorizing the parents to act as natural guardians of their child under certain circumstances; providing an exception; amending s. 744.3021, F.S.; providing an exception to the appointment of guardians for a minor; specifying that the court with proper jurisdiction over probate matters has jurisdiction over certain proceedings if a specified petition is filed; requiring the provision of due process rights for an alleged incapacitated minor; providing an effective date.

By Senator Detert

28-00384-15 2015496__

A bill to be entitled

An act relating to guardians for dependent children who are developmentally disabled or incapacitated; amending s. 39.701, F.S.; requiring an updated case plan developed in a face-to-face conference with the child and other specified persons, when appropriate; providing requirements for the Department of Children and Families when a court determines that a child may be developmentally disabled, has a diagnosis of a developmental disability, or may be incapacitated; requiring the department to provide specified information if another interested party or participant initiates proceedings for the appointment of a guardian; requiring proceedings seeking appointment of a guardian advocate or a determination of incapacity and the appointment of a guardian be conducted in a separate proceeding in probate court; amending s. 393.12, F.S.; requiring the probate court to initiate proceedings for appointment of guardian advocates if petitions are filed for appointment of guardian advocates for certain minors who are subject to chapter 39, F.S., proceedings if such minors have attained a specified age; providing that such a child has the same due process rights as an adult; providing requirements for when an order appointing a guardian advocate must be issued; amending s. 744.301, F.S.; providing that if a child is subject to proceedings under chapter 39, F.S., the parents may act as natural guardians unless the dependency or probate court finds

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that it is not in the child's best interests or their parental rights have been terminated; amending s. 744.3021, F.S.; requiring the probate court to initiate proceedings for appointment of guardian advocates if petitions are filed for appointment guardian advocates for certain minors who are subject to chapter 39, F.S., proceedings if the minors have attained a specified age; providing that such a child has the same due process rights as an adult; providing requirements for when an order appointing a guardian advocate must be issued; providing an effective date.

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

Section 1. Paragraphs (b) and (c) of subsection (3) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

(b) At the first judicial review hearing held subsequent to the child's 17th birthday, the department shall provide the court with an updated case plan that includes specific information related to the independent living skills that the child has acquired since the child's 13th birthday, or since the date the child came into foster care, whichever came later.

1. For any child who may be developmentally disabled or incapacitated, the updated case plan must be developed in a face-to-face conference with the child, if appropriate; the child's attorney; any court-appointed guardian ad litem; the temporary custodian of the child; and the parent, if the

parent's rights have not been terminated.

2. At the judicial review hearing, if the court determines pursuant to the procedures and requirements of chapter 744 and the Florida Probate Rules that the child may be developmentally disabled or has a diagnosis of a developmental disability as defined in s. 393.063, or may be incapacitated, the department shall:

a. Complete a multidisciplinary report, which must include, but is not limited to, a psychosocial evaluation and educational report, as part of the child's updated case plan if such a report has not been completed within the previous 2 years.

b. Identify one or more individuals who are willing to serve as the guardian advocate pursuant to s. 393.12 or as the plenary or limited guardian pursuant to chapter 744 and the Florida Probate Rules. Any other parties or participants may make efforts to identify such a plenary or limited guardian. A child's biological or adoptive family members, including a child's parents if the parents' rights have not been terminated, may not be considered for service as the plenary or limited guardian unless the court enters a written order finding that such an appointment is in the child's best interests.

c. Initiate proceedings within 180 days after the child's 17th birthday for the appointment of a guardian advocate, plenary guardian, or limited guardian for the child in the court with proper jurisdiction over probate matters according to the local rules of judicial administration and the procedures and requirements of chapter 744 and the Florida Probate Rules.

3. In the event another interested party or participant initiates proceedings for the appointment of a guardian

advocate, plenary guardian, or limited guardian for the child, the department shall provide all necessary documentation and information to the petitioner to complete a petition under chapter 393 or chapter 744 within 45 days after the first judicial review hearing after the child's 17th birthday.

4. Any proceedings seeking appointment of a guardian advocate or a determination of incapacity and the appointment of a guardian must be conducted in a separate proceeding in the court with proper jurisdiction over probate matters according to local rules of judicial administration and the procedures and requirements of chapter 744 and the Florida Probate Rules.

(c) If the court finds at the judicial review hearing that the department has not met its obligations to the child as stated in this part, in the written case plan, or in the provision of independent living services, the court may issue an order directing the department to show cause as to why it has not done so. If the department cannot justify its noncompliance, the court may give the department 30 days within which to comply. If the department fails to comply within 30 days, the court may hold the department in contempt.

Section 2. Paragraph (c) is added to subsection (2) of section 393.12, Florida Statutes, to read:

393.12 Capacity; appointment of guardian advocate.—

(2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

(c) If a petition is filed pursuant to this section requesting appointment of a guardian advocate for a minor who is alleged to be developmentally disabled and is the subject of any proceeding under chapter 39, the court with proper jurisdiction over probate matters according to local rules of judicial

administration and the Florida Probate Rules shall initiate proceedings pursuant to this section when the minor reaches the age of 17 years and 6 months or anytime thereafter. The minor shall be provided all the due process rights conferred upon an alleged developmentally disabled adult pursuant to this chapter. The order of appointment of guardian advocate under this section shall issue upon the minor's 18th birthday or as soon thereafter as possible.

Section 3. Subsection (1) of section 744.301, Florida Statutes, is amended to read:

744.301 Natural guardians.—

(1) The parents jointly are the natural guardians of their own children and of their adopted children, during minority, unless the parent's parental rights have been terminated pursuant to chapter 39. If a child is the subject of any proceeding under chapter 39, the parents may act as natural guardians under this section unless the dependency or probate court finds that it is not in the child's best interests. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has been granted, or if the parents have been granted shared parental responsibility, both continue as natural guardians. If the marriage is dissolved and neither parent is given parental responsibility for the child, neither may act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless the court

enters an order stating otherwise.

Section 4. Subsection (1) of section 744.3021, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

744.3021 Guardians of minors.—

(1) Except as provided in subsection (4), upon petition of a parent, brother, sister, next of kin, or other person interested in the welfare of a minor, a guardian for a minor may be appointed by the court without the necessity of adjudication pursuant to s. 744.331. A guardian appointed for a minor, whether of the person or property, has the authority of a plenary guardian.

(4) If a petition is filed pursuant to this section requesting appointment of a guardian for a minor that is the subject of any proceeding under chapter 39 and who is aged 17 years and 6 months or older, the court with proper jurisdiction over probate matters according to local rules of judicial administration and the procedures and requirements of this chapter and the Florida Probate Rules shall initiate proceedings under s. 744.331. The alleged incapacitated minor under this subsection shall be provided all the due process rights conferred upon an alleged incapacitated adult pursuant to this chapter and the Florida Probate Rules. The order of adjudication under s. 744.331 and the letters of limited or plenary guardianship may issue upon the minor's 18th birthday or as soon thereafter as possible.

Section 5. This act shall take effect July 1, 2015.