

By Representative Morse

1 A bill to be entitled
2 An act relating to mental health partial
3 hospitalization programs; creating s. 394.92,
4 F.S.; authorizing services, license
5 requirements, and penalties; creating s.
6 394.921, F.S.; providing definitions; creating
7 s. 394.922, F.S.; requiring an application;
8 creating s. 394.923, F.S.; requiring background
9 screening; creating s. 394.924, F.S.;
10 authorizing fees for licensure and license
11 renewal; creating s. 394.925, F.S.; providing
12 for the issuance and renewal of licenses;
13 creating s. 394.926, F.S.; providing for
14 program standards and rules; creating s.
15 394.927, F.S.; requiring a quality assurance
16 program; creating s. 394.928, F.S.; providing
17 for enforcement; providing penalties; creating
18 s. 394.929, F.S.; providing for inspection,
19 right of entry, and records; creating s.
20 394.93, F.S.; providing for denial, suspension,
21 and revocation of licenses; creating s.
22 394.931, F.S.; requiring the reporting of
23 adverse incidents; creating s. 394.932, F.S.;
24 providing for access to records; creating s.
25 394.933, F.S.; providing penalties for the
26 alteration and improper disposal of patients'
27 records; creating s. 394.935, F.S.; providing
28 for compliance with patients' rights
29 provisions; creating s. 394.936, F.S.;
30 prohibiting rebates; providing penalties for
31 accepting rebates; creating s. 394.937, F.S.;

1 providing criteria for admitting patients;
2 creating s. 394.938, F.S.; requiring partial
3 hospitalization programs to be conducted on
4 licensed premises; providing an effective date.

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

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8 Section 1. Section 394.92, Florida Statutes, is
9 created to read:

10 394.92 Mental health partial hospitalization programs;
11 authorized services; license required; penalties.--

12 (1)(a) Authorized services.--The purpose of a mental
13 health partial hospitalization program is to treat patients
14 who exhibit severe or disabling conditions related to an acute
15 psychiatric or psychological condition or an acute
16 exacerbation of a severe and persistent mental disorder.
17 Mental health partial hospitalization may occur in lieu of
18 either admission to an inpatient hospital or a continued
19 inpatient hospitalization or residential care provided in a
20 level I or level II residential treatment facility licensed
21 under chapter 394. A mental health partial hospitalization
22 program provides a structured program that uses a
23 multidisciplinary team composed primarily of licensed mental
24 health professionals and other staff qualified to provide
25 comprehensive, coordinated services within an individual
26 treatment plan. Mental health partial hospitalization is an
27 outpatient program that is provided to a specific patient for
28 no more than 23 hours during any 24-hour period. A mental
29 health partial hospitalization program provides highly
30 intensive treatments intended to stabilize an acute
31 psychiatric condition and not primarily intended to provide

1 rehabilitation for long-term disabilities resulting from
2 long-term mental disorders.

3 (b) Components.--A mental health partial
4 hospitalization program must offer a comprehensive array of
5 services and must include the following program components:
6 individual and group therapy with physicians or psychologists
7 or other mental health professionals practicing within the
8 scope of their licensure; occupational therapy requiring the
9 skills of a qualified occupational therapist; services of
10 trained psychiatric nurses and other staff trained to work
11 with psychiatric patients; drugs and biologicals furnished for
12 therapeutic purposes; individualized activity therapies that
13 are not primarily recreational or diversionary; family
14 counseling that has the primary purpose of treating the
15 individual's condition; patient training and education that
16 clearly relate to the individual's care and treatment; and
17 diagnostic services.

18 (2) Beginning October 1, 1998, it is unlawful for any
19 entity to hold itself out as a mental health partial
20 hospitalization program, or to act as a mental health partial
21 hospitalization program, unless it is licensed by the agency
22 under this chapter. This subsection is inapplicable to a
23 partial hospitalization program that is operated by a hospital
24 licensed under chapter 395.

25 (3) Any person who violates subsection (2) commits a
26 misdemeanor of the first degree, punishable as provided in s.
27 775.082 or s. 775.083.

28 Section 2. Section 394.921, Florida Statutes, is
29 created to read:

30 394.921 Definitions.--As used in ss. 394.92-394.938,
31 unless the context clearly requires otherwise, the term:

1 (1) "Agency" means the Agency for Health Care
2 Administration.

3 (2) "Department" means the Department of Children and
4 Family Services.

5 (3) "Licensed facility" means a facility licensed in
6 accordance with this chapter.

7 (4) "Licensee" means the owner of a facility, whether
8 the owner is a corporation, a partnership, or an individual.

9 (5) "Mental health professionals" means clinical
10 psychologists, clinical social workers, physicians,
11 psychiatrists, and psychiatric nurses, as defined in s.
12 394.455.

13 (6) "Premises" means those buildings and facilities
14 located at the address of the licensed program and used for
15 the provision of mental health partial hospitalization
16 services.

17 Section 3. Section 394.922, Florida Statutes, is
18 created to read:

19 394.922 Applications.--

20 (1) Any person who wishes to be licensed under ss.
21 394.92-394.938 to provide mental health partial
22 hospitalization services must apply to the agency on forms
23 provided by the agency. The application must contain:

24 (a) The name and address of the applicant, the name of
25 the facility, and the address of the facility.

26 (b)1. If the applicant is a partnership, association,
27 or other form of entity other than an individual or a
28 corporation, the name and address of each member or owner of
29 the entity.

30 2. If the applicant is a corporation, the name and
31 address of each director or officer and the name and address

1 of each person who holds at least a 5-percent ownership
2 interest in the corporation.

3 (c) Such information as the agency considers necessary
4 to establish the character and competency of the applicant and
5 of the administrator of the facility. The information that
6 applicants must provide includes, but is not limited to, a
7 sworn statement, made in accordance with s. 287.133(3)(b),
8 relating to public entity crimes.

9 (d) Such information as the agency considers necessary
10 to determine the ability of the applicant to demonstrate its
11 capacity to comply with rules adopted by the agency under ss.
12 394.92-394.938.

13 (2) The applicant for initial licensure shall furnish
14 proof satisfactory to the agency of its financial ability to
15 operate the unit or facility in accordance with ss.
16 394.92-394.938, which may be accomplished by submitting to the
17 agency a surety bond in the amount of \$50,000. An applicant
18 for an original license shall submit a balance sheet and a
19 statement projecting revenues, expenses, taxes, extraordinary
20 items, and other credits and charges for the first 6 months of
21 operation.

22 (3) Each applicant for licensure must undergo
23 background screening in accordance with the following
24 procedures:

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

26 1. "Affiliated person" means any person who, directly
27 or indirectly, manages, controls, or oversees the operation of
28 a corporation or other business entity that is a licensee,
29 regardless of whether the person is a partner, a shareholder,
30 an owner, an officer, a director, an agent, or an employee of
31 the entity.

1 2. "Applicant" means an individual applicant, or any
2 officer, director, agent, managing employee, or affiliated
3 person, or any partner or shareholder who has an ownership
4 interest of 5 percent or more in the corporation, partnership,
5 or other business entity.

6 3. "Director" means any member of the official board
7 of directors reported in the organization's annual corporate
8 report to the Department of State, or, if no such report is
9 made, any member of the operating board of directors. The term
10 excludes members of separate, restricted boards that serve
11 only in an advisory capacity to the operating board.

12 4. "Managing employee" means the administrator or
13 other similarly titled individual who is responsible for the
14 daily operation of the facility.

15 (b) Upon receipt of a completed, signed, and dated
16 application, the agency shall undertake background screening
17 of the applicant, using the level 2 standards set forth in
18 chapter 436.

19 (c) Each applicant must submit to the Department of
20 Law Enforcement the information, including a full set of
21 fingerprints, which is necessary to enable a criminal
22 background investigation to be conducted, including a state
23 criminal-history and juvenile-history record check. The
24 Department of Law Enforcement shall forward the fingerprints
25 to the Federal Bureau of Investigation for a national
26 criminal-history record check. Upon completion of the state
27 and national criminal-history record checks, the Department of
28 Law Enforcement shall report the findings to the agency. The
29 actual cost of such state and national criminal-history record
30 checks must be borne by the applicant.

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1 (d) Each applicant must submit to the Department of
2 Children and Family Services all information that is necessary
3 for conducting a record check through the central abuse
4 registry. The actual cost of searching the central abuse
5 registry must be borne by the applicant.

6 (e) A license may not be granted to an applicant who
7 has been found guilty of, regardless of adjudication, or has
8 entered a plea of nolo contendere or guilty to, any offense
9 prohibited under the level 2 standards of chapter 435. A
10 license may not be granted to any applicant who has a
11 confirmed report of abuse, neglect, or exploitation, as
12 defined in s. 415.102, which has been uncontested or upheld
13 under s. 415.1075, or who has a proposed confirmed report that
14 remains unserved and is maintained in the central abuse
15 registry and tracking system pursuant to s. 415.1065(2)(c).

16 (f) Each applicant must submit to the agency with the
17 application information concerning any previous violation by
18 the applicant, any fine, suspension, or termination that has
19 been imposed on the applicant under the laws or rules of this
20 state or any other state, and any information concerning any
21 previous violation by the applicant of the laws, rules, or
22 regulations relating to the Medicaid or Medicare programs.

23 (g) The agency may deny licensure to any applicant
24 who:

25 1. Has falsely represented a material fact in the
26 application or has omitted from the application any material
27 fact, including, but not limited to, the fact that a
28 controlling or ownership interest is held by any officer,
29 director, agency, managing employee, affiliated person,
30 partner, or shareholder who may not be eligible to
31 participate;

1 2. Has previously been found by any licensing,
2 certifying, or professional standards board of the Department
3 of Health to have violated the standards or conditions
4 relating to licensure or certification or the quality of
5 services provided; or

6 3. Has been or is currently excluded, suspended, or
7 terminated from, or has involuntarily withdrawn from,
8 participation in the Medicaid program of this or any other
9 state or from participation in the Medicare program or any
10 other governmental health care or health insurance program.

11 (h) Upon renewal of licensure, each applicant must
12 submit to the agency, under penalty of perjury, an affidavit
13 of compliance with the background screening provisions of this
14 section.

15 (i) Proof of compliance with the level 2 background
16 screening requirements of chapter 435 which has been submitted
17 within the previous 5 years in compliance with any other
18 health care licensure requirements of this state is acceptable
19 in fulfillment of the Department of Law Enforcement and
20 Department of Children and Family Services background check if
21 the proof of compliance is accompanied, under penalty of
22 perjury, by an affidavit of compliance with these background
23 screening provisions.

24 (4) The applicant shall provide proof of liability
25 insurance coverage in amounts set by the agency by rule.

26 (5) The agency must disapprove an application for such
27 a license if it determines that a program should not be
28 licensed under ss. 394.92-394.938.

29 Section 4. Section 394.923, Florida Statutes, is
30 created to read:

31 394.923 Background screening.--

1 (1)(a) The owner or operator of a facility that
2 provides mental health partial hospitalization services shall
3 conduct level 1 background screening, including
4 criminal-history record checks and abuse-registry checks, on
5 all direct-care employees in accordance with chapter 435.
6 Background-screening forms provided by the agency must be used
7 for this purpose.

8 (b) Pursuant to chapter 435, an employee may not be
9 retained if the employee is not of suitable character or
10 competency as indicated by the results of the criminal-history
11 record check or abuse-registry check conducted in connection
12 with the background screening. The agency may exempt an
13 individual from disqualification for employment in accordance
14 with chapter 435.

15 (2) When an employee, a volunteer, an operator, or an
16 owner of a mental health partial hospitalization facility has
17 a confirmed report of adult abuse, neglect, or exploitation,
18 as defined in s. 415.102, and the protective investigator
19 knows that the individual is an employee, a volunteer, an
20 operator, or an owner of the facility, the agency must be
21 notified of the confirmed report.

22 Section 5. Section 394.924, Florida Statutes, is
23 created to read:

24 394.924 Fees.--

25 (1) Each application for licensure or renewal of
26 licensure to provide mental health partial hospitalization
27 services must be accompanied by a fee set by the agency by
28 rule. Such fees must be calculated to cover only the
29 reasonable cost of regulation under ss. 394.92-394.938.

30 (2) All fees collected under this section must be
31 deposited in the Health Care Trust Fund.

1 Section 6. Section 394.925, Florida Statutes, is
2 created to read:

3 394.925 Issuance and renewal of licenses.--

4 (1) Upon reviewing the application for licensure to
5 provide mental health partial hospitalization services and
6 receiving appropriate fees, the agency shall issue an original
7 license or a renewal license to any applicant who meets the
8 requirements of ss. 394.92-394.938.

9 (2) A license is valid for a period of 1 year. An
10 applicant for renewal of a license must apply to the agency at
11 least 90 days before the current license expires.

12 (3) A license may not be transferred from one entity
13 to another and is valid only for the premises for which it was
14 originally issued. As used in this subsection, the term
15 "transfer" includes, but is not limited to, transfer of a
16 majority of the ownership interests in a licensee or transfer
17 of responsibilities under the license to another entity by
18 contract.

19 (4) The agency may issue a probationary license to an
20 applicant who has completed the application requirements of
21 ss. 394.92-394.938 but has not, at the time of submitting the
22 application, developed an operational mental health partial
23 hospitalization program. The probationary license expires 90
24 days after its issuance and may be renewed once for an
25 additional 90-day period. The agency may revoke a probationary
26 license in accordance with s. 394.929.

27 (5) The agency may issue an interim license to an
28 applicant who has substantially completed all requirements for
29 applying for a renewal license and has initiated action to
30 fully meet the requirements for such licensure. The interim
31 license expires 90 days after its issuance and, in cases of

1 extreme hardship, may be renewed once for an additional 90-day
2 period.

3 (6) Any applicant who fails to file an application for
4 license renewal during the 90-day relicensure period is
5 considered unlicensed and is subject to penalties under s.
6 394.92.

7 Section 7. Section 394.926, Florida Statutes, is
8 created to read:

9 394.926 Program standards; rules.--

10 (1) The agency shall adopt reasonable rules that
11 provide minimum standards for mental health partial
12 hospitalization programs to ensure that:

13 (a) Sufficient numbers and types of professional and
14 qualified personnel are on duty and available at all times to
15 provide necessary and adequate client safety and effective
16 care.

17 (b) Adequate space is provided to each client of a
18 licensed program.

19 (c) Each licensee establishes and implements adequate
20 dietary services, when applicable, housekeeping, sanitation,
21 and facility services, disaster planning, emergency medical
22 response, treatment planning, and medical recordkeeping.

23 (d) Each program has a psychiatrist, licensed under
24 chapter 458 or chapter 459, who is the program medical
25 director and establishes general medical policies for the
26 program.

27 (e) The medical director or another licensed physician
28 is on call 24 hours a day.

29 (2) Minimum firesafety standards shall be established
30 and enforced by the State Fire Marshal in cooperation with the
31 agency. Such standards must be included in a rule that is

1 adopted by the agency after consultation with the State Fire
2 Marshal.

3 (3) The grounds and buildings must be maintained in a
4 safe and sanitary condition, as required in s. 386.01.

5 Section 8. Section 394.927, Florida Statutes, is
6 created to read:

7 394.927 Mental health partial hospitalization
8 programs; quality assurance programs.--

9 (1) Effective January 1, 1999, any mental health
10 partial hospitalization program licensed under ss.
11 394.92-394.938 shall have an ongoing quality assurance
12 program. The purpose of the quality assurance program is to
13 objectively and systematically monitor and evaluate the
14 appropriateness, effectiveness, and quality of client care; to
15 ascertain that patients who are admitted to the program
16 require levels of care appropriate for partial hospitalization
17 programs; and to ensure that the services rendered are
18 consistent with reasonable, prevailing professional standards
19 and resolve identified problems.

20 (2) Each program shall develop internal policies for
21 quality assurance and a plan of operation that describes the
22 program's quality assurance program. These policies must
23 comply with standards developed by the agency by rule. These
24 internal policies must include, but are not limited to:

25 (a) Procedures, instruments, and schedules for initial
26 and periodic clinical assessment of patients, including
27 procedures for monitoring outcomes, using state-approved
28 methodologies;

29 (b) Standards for the admission and continued stay of
30 patients;

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- 1 (c) Standards for the provision of patient care,
2 including ongoing improvement of clinical treatment
3 guidelines;
- 4 (d) Procedures for the maintenance of client records
5 and charting;
- 6 (e) Policies and procedures for staff development and
7 training which are aimed at improving quality;
- 8 (f) Standards and policies for staff credentialing and
9 for the supervision of nonlicensed staff;
- 10 (g) Procedures for peer review and resource
11 utilization;
- 12 (h) Policies and procedures for adverse-incident
13 reporting which include verification of corrective action to
14 remediate or minimize incidents and provide for reporting such
15 incidents to the agency within a timeframe prescribed by rule;
- 16 (i) Policies and procedures for referral to other
17 services and supports needed during treatment or upon
18 discharge from the program.
- 19 (3) The plan of operation must be submitted to the
20 chief executive officer or director of the program for
21 approval, and a copy must be provided to the agency.
- 22 (4) The quality assurance program is to be directly
23 answerable to the chief executive officer or director of the
24 program and is subject to review by the governing board of the
25 licensed program, if it has a governing board.
- 26 (5) The quality assurance program must be under the
27 immediate supervision and control of a mental health
28 professional who has documented training and education in
29 quality improvement and who must approve the plan in its
30 entirety and ensure the integrity of its implementation by
31 continuous monitoring.

1 Section 9. Section 394.928, Florida Statutes, is
2 created to read:

3 394.928 Enforcement.--

4 (1) The agency shall allow any mental health partial
5 hospitalization program that is in operation at the time of
6 adoption of any rule authorized by ss. 394.92-394.938 a
7 reasonable period, not to exceed 6 months, to bring itself
8 into compliance with the rule.

9 (2) The agency may impose an administrative penalty of
10 no more than \$1,000 per day against any licensee that violates
11 any rule adopted under ss. 394.92-394.938 and may suspend or
12 revoke the license or deny the renewal application of the
13 licensee. In imposing such a penalty, the agency shall
14 consider the severity of the violation, actions taken by the
15 licensee to correct the violation, and previous violations
16 committed by the licensee. Fines collected under this
17 subsection must be deposited in the Health Care Trust Fund.

18 (3) The agency shall maintain an action in circuit
19 court to enjoin the unlawful operation of an unlicensed mental
20 health partial hospitalization program, impose restrictions on
21 admissions, and impose fines against such programs.

22 Section 10. Section 394.929, Florida Statutes, is
23 created to read:

24 394.929 Inspection; right of entry; records.--

25 (1)(a) The agency may enter and inspect at any time a
26 licensed mental health partial hospitalization facility to
27 determine whether the facility is in compliance with ss.
28 394.92-394.938 and the rules of the agency.

29 (b) The agency shall conduct an annual licensure
30 inspection of all mental health partial hospitalization
31 programs.

1 (c) The agency may enter and inspect any premises that
2 it has probable cause to suspect may be operating as an
3 unlicensed mental health partial hospitalization program;
4 however, such an entry and inspection may be made only with
5 the permission of the person in charge of the premises or
6 pursuant to a warrant.

7 (d) Any application for licensure under ss.
8 394.92-394.938 constitutes full permission for the agency to
9 enter and inspect the premises of the applicant or licensee at
10 any time.

11 (2) For purposes of monitoring and investigation, the
12 department and the agency shall have access to the clinical
13 records of any client of a licensee, the provisions of s.
14 394.4615 to the contrary notwithstanding.

15 (3) The agency shall schedule periodic inspections of
16 licensees so as to minimize the cost to the licensees and the
17 disruption of the licensees' programs. This subsection does
18 not limit the authority of the agency to inspect the program
19 of a licensee at any time.

20 (4) Each licensee shall maintain as public
21 information, available to any person upon request, copies of
22 all reports of inspections of the licensee which are filed
23 with or issued by any governmental agency or accrediting body
24 during the preceding 5-year period. The licensee shall furnish
25 a copy of the report on the most recent inspection conducted
26 by the agency to any person upon payment of a reasonable
27 charge for copying. Such reports must be made available for
28 inspection on licensed premises.

29 Section 11. Section 394.93, Florida Statutes, is
30 created to read:

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1 394.93 Denial, suspension, and revocation of licenses;
2 other remedies.--

3 (1) The agency may issue an emergency order suspending
4 or revoking a license of a mental health partial
5 hospitalization program if the agency determines that the
6 continued operation of the licensed program presents a clear
7 and present danger to the public health or safety.

8 (2) The agency may impose a moratorium on admissions
9 to a licensee or to any program or portion of a licensed
10 program if the agency determines that any condition in the
11 program presents a threat to the public health or safety.

12 (3) If the agency determines that an applicant or
13 licensee is not in compliance with ss. 394.92-394.938 or the
14 rules adopted under those sections, the agency shall deny,
15 suspend, or revoke the license or application or may suspend,
16 revoke, or impose reasonable restrictions on any portion of
17 the license. If a license is revoked, the licensee is barred
18 from submitting any application for licensure to the agency
19 for a period of 2 years after the revocation.

20 (4) The agency shall maintain an action in circuit
21 court to enjoin the operation of any licensed or unlicensed
22 program that is in violation of ss. 394.92-394.938 or the
23 rules adopted under those sections.

24 (5) License denial, suspension, or revocation
25 procedures must be in accordance with chapter 120.

26 Section 12. Section 394.931, Florida Statutes, is
27 created to read:

28 394.931 Incident reporting.--Incident reporting is the
29 affirmative duty of all staff of a mental health partial
30 hospitalization program. Any person who files an incident
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1 report may not be subjected to any civil action by virtue of
2 such incident report.

3 Section 13. Section 394.932, Florida Statutes, is
4 created to read:

5 394.932 Access to records.--The agency has access to
6 all records necessary to determine agency compliance with ss.
7 394.92-394.938.

8 Section 14. Section 394.933, Florida Statutes, is
9 created to read:

10 394.933 Patients' records; penalties for altering.--

11 (1) Any person who fraudulently alters, defaces,
12 improperly disposes of, or falsifies any medical record, or
13 causes or solicits any of these offenses to be committed,
14 commits a misdemeanor of the second degree, punishable as
15 provided in s. 775.082 or s. 775.083.

16 (2) A conviction under subsection (1) is grounds for
17 restriction, suspension, or termination of licensure.

18 Section 15. Section 394.935, Florida Statutes, is
19 created to read:

20 394.935 Patients' rights.--Mental health partial
21 hospitalization programs shall comply fully with all patients'
22 rights provisions of part I of chapter 394.

23 Section 16. Section 394.936, Florida Statutes, is
24 created to read:

25 394.936 Rebates prohibited; penalties.--

26 (1) It is unlawful for any person to pay or receive
27 any commission, bonus, kickback, or rebate, or to engage in
28 any split-fee arrangement, in any form whatsoever, with any
29 physician, surgeon, organization, or person, either directly
30 or indirectly, for patients referred to a licensed mental
31 health partial hospitalization program.

1 (2) The agency shall adopt rules for assessing
2 administrative penalties for acts prohibited in subsection
3 (1). Penalties applicable to an entity that is licensed by the
4 agency may include any disciplinary action available to the
5 agency under the appropriate licensing laws. Penalties
6 applicable to an entity that is not licensed by the agency may
7 include:

8 (a) A fine in an amount not exceeding \$1,000 per day.

9 (b) If applicable, a recommendation by the agency to
10 the appropriate licensing board that disciplinary be taken.

11 Section 17. Section 394.937, Florida Statutes, is
12 created to read:

13 394.937 Admission of patients.--A patient may be
14 admitted to a mental health partial hospitalization program
15 only by a psychiatric physician who is licensed under chapters
16 458 and 459. Before admitting a patient, the psychiatric
17 physician must certify, after a face-to-face evaluation of the
18 patient, that mental health partial hospitalization services
19 are reasonable and necessary for the diagnosis or active
20 treatment of the individual's condition and can reasonably be
21 expected to improve or maintain the individual's condition and
22 functional level and to prevent relapse or hospitalization and
23 that the patient would meet level-of-care requirements for
24 acute inpatient hospitalization if not for provision of mental
25 health partial hospitalization services.

26 Section 18. Section 394.938, Florida Statutes, is
27 created to read:

28 394.938 Licensed premises.--A mental health partial
29 hospitalization program must be conducted on premises that are
30 licensed specifically for that program. The mental health
31 partial hospitalization program may not be conducted on

1 premises that are licensed for any purpose other than for
2 programs licensed under chapter 394, chapter 395, or chapter
3 397.

4 Section 19. This act shall take effect October 1 of
5 the year in which enacted.

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SENATE SUMMARY

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Creates ss. 394.92-394.938, F.S., which sections provide
for mental health partial hospitalization programs.
Provides for licensure. Provides requirements and
provides penalties for violations. (See bill for
details.)