

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 682

SPONSOR: Senator Forman

SUBJECT: Mental Health Services for Children and Adolescents

DATE: February 8, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 682 requires that children in the legal custody of the department be placed by the department in a residential treatment center licensed under s. 394.875, F.S., or in a hospital licensed under ch. 395, F.S., only after verification by a qualified evaluator (psychologist or psychiatrist) that residential mental health treatment is clinically appropriate for treating the child’s emotional disturbance and that available less restrictive treatment modalities have been considered.

The bill requires the residential treatment program to report monthly to the department on the child’s progress and monthly status reports must be submitted to the court by the department. The bill requires a court hearing no later than 3 months after the child is placed in residential treatment that includes a clinical review by a qualified evaluator addressing the need for continued residential treatment. The court reviews the case every 90 days thereafter. The court may order that the child be placed in a less restrictive setting at any time it is determined that residential treatment is not meeting the child’s needs. The bill requires that a guardian ad litem be appointed for all children placed in a residential treatment program.

The bill provides consistency with s. 394.495, F.S., prohibiting the admission of children or adolescents to state mental health facilities that are state-owned or state-operated. A child or adolescent may be admitted to a residential treatment center or a crisis stabilization unit licensed under ch. 394, F.S., or a hospital licensed under ch. 395, F.S., as a voluntary patient or may be admitted to these facilities as an involuntary placement upon order of the court pursuant to s. 394.467, F.S. The bill specifies that these facilities must provide the least restrictive treatment appropriate to the child’s or adolescent’s needs and must adhere to the guiding principles, system of care, and service planning provisions contained in Part III of ch. 394, F.S., known as the “Comprehensive Child and Adolescent Mental Health Services Act.”

The bill creates the authority under s. 394.875, F.S., to license residential treatment centers that provide mental health treatment to children and adolescents with emotional disturbances and

provides that it is unlawful for an entity to hold itself out to be or to act as such a facility without a license. The Department of Children and Family Services, in consultation with the Agency for Health Care Administration, is directed to adopt rules specifying standards for admission; length of stay; program and staffing; discharge and discharge planning; treatment planning; seclusion, restraints, and time out; rights of patients under s. 394.459, F.S., use of psychotropic medications; and operational requirements.

This bill amends sections 39.407, 394.4785, 394.67, 394.875, 409.175, of the Florida Statutes.

II. Present Situation:

Statutory Authority for Placement of Children and Adolescents in Residential Treatment Facilities

The statutory provisions for placing children and adolescents who are in the department's legal custody pursuant to s. 39.402, F.S. or s. 39.507, F.S., into in-patient facilities or residential treatment facilities include:

1. Section 394.4625, F.S., includes provisions for the voluntary admission of persons under 18 years of age to a mental health facility. The law specifies that a facility may receive for observation, diagnosis, or treatment any person age 17 or under for whom an application is made by his or her guardian. A person age 17 or under may be admitted to the facility only after a hearing to verify the voluntariness of the consent.
2. Section 394.467, F.S., requires the placement of children and adolescents in designated Baker Act receiving or treatment facilities for appropriate mental health treatment when criteria are met under s. 394.463, F.S. Section 394.467, F.S., includes provisions for: client criteria for placement, admission to a treatment facility, petition for involuntary placement, appointment of counsel, continuance of hearing, hearing on involuntary placement, procedure for continued involuntary placement, and return of patients.
3. Section 39.407(4), F.S., specifies that a judge may order a child to an out-of-home placement to receive mental health services from a psychiatrist, psychologist, or other appropriate service provider based on evidence that the child should receive treatment. The law states that the judge may order that the child be placed in a residential facility for treatment services. The law specifies that in those cases, the procedures and criteria contained in s. 394.467, F.S., apply.

(The department reports that approximately 800 children who are in state custody were admitted to residential treatment centers or therapeutic group homes during FY 1997-1998 for the purpose of receiving treatment for an emotional disturbance. Those placements were funded with state general revenue funds for children's mental health services.)

The department reports that since the late 1970s, all residential placements funded through the children's mental health budget (state general revenue funds) are made through the district's multidisciplinary process requiring an assessment by a clinical psychologist or a psychiatrist with experience or training in children's mental disorders. This multidisciplinary staffing process (case review committee) has been used under the authority of s. 394.4781, F.S., for making decisions

on the placement of children and adolescents with serious emotional disturbances in residential mental health treatment programs. This multidisciplinary case review process ensures that community-based treatment has been fully explored before residential placement is considered.

The department reports that during FY 1998-99, there were 411 residential placements to residential treatment centers and 877 placements to therapeutic group homes funded through the department's children's mental health budget.

Section 394.4785, F.S., specifies that children or adolescents who are admitted to a state mental hospital and placed in the general population or in a specialized unit for children or adolescents must reside in living quarters separate from adult patients, and a minor who has not attained the age of 14 must reside in living quarters separate from minors who are 14 years of age or older. This provision is not consistent with s. 394.495, F.S., which provides that state mental health facilities may not be included in the array of services for children and adolescents with emotional disturbances because the Legislature does not intend for children and adolescents to be admitted to those facilities.

The department reports that children have not been placed in the civil units of the state mental health facilities since 1987, and adolescents have not been placed in state facilities since 1991. The department reports that at any given time there are approximately 10-15 adolescent patients admitted to the forensic units of the state mental health facilities because these adolescents were tried as adults.

Comprehensive Child and Adolescent Mental Health Services Act

Chapter 98-5, Laws of Florida, created the "Comprehensive Child and Adolescent Mental Health Services Act" in ss. 394.490-394.497, F.S. Guiding principles are established for child and adolescent mental health services placing greater emphasis on such things as individualized needs and strengths of the child or adolescent and his family; the involvement of the families or surrogate families in planning, selecting, and delivering services; and integrating and linking treatment services with schools, residential child-caring agencies, and other child-related agencies. The law directs the Department of Children and Family Services to establish within available resources the array of assessment and treatment services to meet the individualized service and treatment needs of the children, adolescents, and their families who are included in the defined target populations. Provisions are also included for service planning and case management.

Residential Child-Caring Agencies

Section 409.175, F.S., includes requirements for the licensure of residential child-caring agencies which include residential treatment centers and groups homes, many of which serve children and adolescents with an emotional disturbance. Chapter 65C-14, Florida Administrative Code, provides the licensure standards for residential child-caring agencies which do not include special program or staffing requirements for serving children or adolescents with an emotional disturbance. The actual number of licensed child-caring agencies in Florida that serve children and adolescents with emotional disturbances is unknown.

The department reports that 41 child-caring agencies licensed under s. 409.175, F.S., also contract with the Alcohol, Drug Abuse, and Mental Health (ADM) program office in the department to provide children's mental health services. Of the 41 under contract with ADM, 16 are residential treatment centers and 25 are therapeutic groups homes. Those agencies under contract with ADM are required to comply with ch. 65-10, Florida Administrative Code, which includes standards for all residential programs (treatment centers, therapeutic group homes, therapeutic foster homes, and wilderness therapeutic services) that receive state children's mental health funds to provide treatment services to children or adolescents who have an emotional disturbance. These standards address areas such as staff composition and coverage; intake and admission; assessment, treatment planning, and discharge planning; service activities; children's rights; protective restraints; seclusion; and clinical record documentation.

III. Effect of Proposed Changes:

CS/SB 682 specifies that children in the legal custody of the department may be placed by the department in a residential treatment center licensed under s. 394.875, F.S., or in a hospital licensed under chapter 395, F.S. Prior to placement, the child must have a suitability assessment completed by a qualified evaluator (a psychiatrist or psychologist with at least 3 years of experience in diagnosing and treating children with serious emotional disturbances) verifying that a residential treatment setting is clinically appropriate for the child's mental health treatment needs and that available less restrictive treatment modalities have been considered. Other requirements are included in the bill relating to the qualified evaluator to assure no conflict of interest.

Immediately upon placing a child in a residential treatment program, the department must notify the court and the guardian ad litem and provide a copy of the assessment by the qualified evaluator. Requirements are included for the residential treatment program to submit a copy of the preliminary treatment plan to the child, the guardian ad litem, and the department within 10 days after the child's admission. Within 30 days after admission, the program must review the child's progress toward achieving treatment goals and the appropriateness of his placement and submit a written report to the department and the guardian ad litem. This report must also include the child's discharge plan. Progress reports are submitted by the residential treatment program to the department every 30 days and programs will not be reimbursed by the department until every written report that is due has been received.

The bill requires that the department provide a written report to the court having jurisdiction over the child at the beginning of each month that describes the child's progress towards achieving his or her individualized plan of treatment. The court must conduct a hearing to review the status of the child's treatment in the residential treatment program no later than 3 months after admission and every 90 days thereafter. An independent review of the child's progress must be completed by a qualified evaluator and submitted to the court prior to the first court review. Continuing the child's placement in residential treatment must also be a subject of the child's 6 month judicial review required under s. 39.701, F.S. The court may order that the child be placed in a less restrictive setting at any time it is determined that residential treatment is not meeting the child's needs.

The bill requires that a guardian ad litem be appointed for all children placed in a residential treatment program.

The bill directs the department to adopt rules for implementing timeframes for completing the initial suitability assessments and the 3-month review by the qualified evaluators. The Agency for Health Care Administration must adopt rules for the registration of qualified evaluators, the procedure for selecting evaluators, and a reasonable cost-efficient fee schedule for the qualified evaluators.

Section 394.4785, F.S., is amended to provide consistency with s. 394.495, F.S., which prohibits the admission of children or adolescents to state mental health facilities that are state-owned or state-operated. The bill specifies that a child or adolescent may be admitted to a residential treatment center or a crisis stabilization unit licensed under ch. 394, F.S., or a hospital licensed under ch. 395, F.S., as a voluntary patient or may be involuntarily admitted to these facilities upon order of the court pursuant to s. 394.467, F.S. The bill specifies that these facilities must provide the least restrictive treatment appropriate to the child's or adolescent's needs and must adhere to the guiding principles, system of care, and service planning provisions contained in Part III of ch. 394, F.S., known as the "Comprehensive Child and Adolescent Mental Health Services Act."

The bill amends s. 394.875, F.S., creating the authority to license residential treatment centers that provide mental health treatment to children and adolescents with emotional disturbances who meet the clinical criteria in s. 394.493(1)(a), (b), or (c), F.S. "Residential treatment center for children and adolescents" is defined in s. 394.67(18), F.S., and includes therapeutic group homes. Residential treatment centers are prohibited from operating unless they are licensed by the Agency for Health Care Administration under s. 394.875, F.S.

The bill directs the department in consultation with the Agency for Health Care Administration to adopt rules specifying standards in areas such as admission; length of stay; discharge; treatment planning; program and staffing; seclusion, restraints, and time-out; rights of patients under s. 394.459, F.S.; and use of psychotropic medications.

The bill amends s. 409.175(2)(j), F.S., specifying that residential child-caring agencies do not include residential treatment centers licensed under s. 394.875, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The department reports that residential treatment centers currently licensed under s. 409.175, F.S., could incur new costs in order to meet mental health standards under ch. 394, F.S.

C. Government Sector Impact:

There would be additional costs to the department relating to qualified evaluators (psychiatrists and psychologists) conducting the suitability assessment on each child in the department's custody who may need residential mental health treatment. The department estimates this annual cost to be \$206,250. This estimate is based on 825 children in their custody requiring a suitability assessment at an average cost of \$250 per assessment. A portion of the initial suitability assessments would be paid by the Medicaid program because all children in state custody are Medicaid eligible and the Agency for Health Care Administration reports that these suitability assessments would qualify for reimbursement under the Medicaid program. Because Medicaid pays only \$180 for a psychiatric evaluation, it is estimated that \$57,750 of the assessment costs would need to be paid by the department (general revenue) rather than by the Medicaid program.

The bill also requires that a qualified evaluator review the child's treatment progress prior to the 3 month court review. The department reports that four months is the average length of stay in residential treatment programs. It is likely that the stringent reporting and oversight provisions in this bill will reduce the length of stay for many cases to less than 3 months. If the average cost for each 3-month clinical review is \$250, and only 50 percent of the cases require these reviews; the cost would be approximately \$100,000. Because Medicaid does not currently pay for any residential mental health treatment, these costs for the 3-month review would not be covered by the Medicaid program. However, if the Governor's request is funded by the 2000 Legislature that the Medicaid program expands services to pay for psychiatric treatment for children in residential treatment programs, these review costs will become Medicaid reimbursable.

There would be additional court hearings for those children who stay in residential treatment longer than 3 months which would result in an indeterminate fiscal impact on the judicial system. Some court hearings to review residential treatment would be included in the 6 month dependency review as the bill requires that continuing residential placement must be a subject of the child's 6 month judicial review required under s. 39.701, F.S.

The department reports that the Family Safety and Preservation staff that license child-caring agencies would have a reduced workload. There could be an increase in workload in the Agency for Health Care Administration that is responsible for licensing mental health

residential treatment facilities and crisis stabilization units under s 394.875, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In the case of *M.W. v. Davis*, 722 So.2d 966, 968 (Fla. 4th DCA), the appellate court concluded that a dependent child in the legal custody of the department and the department seeking residential mental health treatment for the child does not constitute an involuntary placement requiring a Baker Act hearing. Review of the intermediate appellate court's decision is currently pending before the Florida Supreme Court.

The recommendations by the Supreme Court on Fairness contained in *Judicial Administration of the Baker Act and Its Effects on Florida's Elders*, released in December, 1999, address issues relating to the rights of children. The Commission recommends that the Legislature direct and fund a comprehensive interdisciplinary study on the legal needs of children under the Baker Act that includes issues relating to those in SB 682 such as the right of children and adolescents to voluntarily consent to in-patient mental health treatment without the consent of their guardian.

Articles recently published in the *Sun-Sentinel* discuss issues relating to problems associated with children and adolescents with emotional disturbances being inappropriately placed in residential treatment centers for long periods of time with inadequate facility treatment standards. The articles stress the need for quality treatment programs in these residential centers as well as the need to develop community-based alternatives to residential care.

VIII. Amendments:

None.