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A bill to be entitled

An act relating to mental health; amending s. 394.455, F.S.; revising a definition; providing additional definitions of terms used in pt. I of ch. 394, F.S., "The Baker Act"; amending s. 394.4598, F.S.; revising language with respect to the guardian advocate; authorizing the guardian advocate to consent to administration of medication over objection under certain circumstances; amending s. 394.4615, F.S.; providing for release of certain clinical records to certain persons for certain purposes; amending s. 394.463, F.S.; revising criteria and procedures for involuntary examination; creating s. 394.4655, F.S.; providing criteria and procedures for involuntary outpatient placement; providing for a voluntary examination for outpatient placement; providing for a petition for involuntary outpatient placement; providing for appointment of counsel; providing for continuance of hearings; providing for a hearing on involuntary outpatient placement; setting forth procedures for the hearing; providing for appointment of a master to preside; providing for an independent examination; requiring a court to order involuntary outpatient placement under certain circumstances; requiring a treatment plan; providing for plan modification; providing for a patient to be brought to a receiving facility upon failure or refusal to comply with the treatment plan; providing for involuntary inpatient placement or involuntary assessment; requiring consideration of a patient's competence to proceed; requiring a list of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 guardian advocates to be submitted to the court; defining
31 the role of a guardian advocate; providing for discharge
32 of the guardian advocate; requiring certain documentation;
33 allowing a person for whom an involuntary outpatient
34 placement petition has been filed to agree to a voluntary
35 treatment agreement; specifying requirements for
36 agreements; providing for modifications; providing for
37 filing of an affidavit of noncompliance with a voluntary
38 treatment plan; requiring a hearing; requiring dismissal
39 of petitions in certain circumstances; providing
40 procedures for continued involuntary outpatient placement;
41 providing for a continued involuntary outpatient placement
42 certificate; requiring a hearing; requiring appointment of
43 a public defender; requiring hearings; providing for
44 appointment of a special master; amending s. 394.467,
45 F.S.; revising language with respect to involuntary
46 inpatient placement; providing a reference to inpatient
47 and outpatient involuntary placement; providing
48 requirements for placement orders; providing for voluntary
49 treatment agreements; providing a procedure for continued
50 involuntary outpatient placement; amending ss. 394.495,
51 394.496, 394.498, 419.001, and 744.704, F.S.; correcting
52 cross references; authorizing the Department of Children
53 and Family Services to adopt rules; providing
54 severability; providing an effective date.

55
56 Be It Enacted by the Legislature of the State of Florida:
57

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58 Section 1. Subsection (3) of section 394.455, Florida
 59 Statutes, is amended, existing subsections (16)-(28) are
 60 renumbered as subsections (17)-(29), respectively, existing
 61 subsections (29) and (30) are renumbered as subsections (31) and
 62 (32), respectively, and new subsections (16) and (30) are added
 63 to said section, to read:

64 394.455 Definitions.--As used in this part, unless the
 65 context clearly requires otherwise, the term:

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

71 (16) "Involuntary placement" means involuntary outpatient
 72 treatment pursuant to s. 394.4655 or involuntary inpatient
 73 treatment pursuant to s. 394.467.

74 (30) "Service provider" means any public or private
 75 receiving facility, an entity under contract with the Department
 76 of Children and Family Services to provide mental health
 77 services, or a clinical psychologist, clinical social worker,
 78 physician, or psychiatric nurse, or a community mental health
 79 center or clinic as defined in this part.

80 Section 2. Subsections (1) and (7) of section 394.4598,
 81 Florida Statutes, are amended to read:

82 394.4598 Guardian advocate.--

83 (1) The administrator may petition the court for the
 84 appointment of a guardian advocate based upon the opinion of a
 85 psychiatrist that the patient is incompetent to consent to
 86 treatment. If the court finds that a patient is incompetent to

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87 consent to treatment and has not been adjudicated incapacitated
 88 and a guardian with the authority to consent to mental health
 89 treatment appointed, it shall appoint a guardian advocate. The
 90 patient has the right to have an attorney represent him or her
 91 at the hearing. If the person is indigent, the court shall
 92 appoint the office of the public defender to represent him or
 93 her at the hearing. The patient has the right to testify, cross-
 94 examine witnesses, and present witnesses. The proceeding shall
 95 be recorded either electronically or stenographically, and
 96 testimony shall be provided under oath. One of the professionals
 97 authorized to give an opinion in support of a petition for
 98 involuntary placement, as described in s. 394.4655 or s.
 99 394.467(2), must testify. A guardian advocate must meet the
 100 qualifications of a guardian contained in part IV of chapter
 101 744, except that a professional referred to in this part, an
 102 employee of the facility providing direct services to the
 103 patient under this part, a departmental employee, a facility
 104 administrator, or member of the Florida local advocacy council
 105 shall not be appointed. A person who is appointed as a guardian
 106 advocate must agree to the appointment.

107 (7) The guardian advocate shall be discharged when the
 108 patient is discharged from an order for involuntary outpatient
 109 placement or involuntary inpatient placement ~~a receiving or~~
 110 ~~treatment facility to the community~~ or when the patient is
 111 transferred from involuntary to voluntary status. The court or a
 112 hearing officer shall consider the competence of the patient
 113 pursuant to subsection (1) and may consider an involuntarily
 114 placed patient's competence to consent to treatment at any
 115 hearing. Upon sufficient evidence, the court may restore, or the

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116 hearing officer may recommend that the court restore, the
 117 patient's competence. A copy of the order restoring competence
 118 or the certificate of discharge containing the restoration of
 119 competence shall be provided to the patient and the guardian
 120 advocate.

121 Section 3. Subsection (3) of section 394.4615, Florida
 122 Statutes, is amended to read:

123 394.4615 Clinical records; confidentiality.--

124 (3) Information from the clinical record may be released
 125 under the following circumstances ~~when~~:

126 (a) When a patient has declared an intention to harm other
 127 persons. When such declaration has been made, the administrator
 128 may authorize the release of sufficient information to provide
 129 adequate warning to the person threatened with harm by the
 130 patient.

131 (b) When the administrator of the facility or secretary of
 132 the department deems release to a qualified researcher as
 133 defined in administrative rule, an aftercare treatment provider,
 134 or an employee or agent of the department is necessary for
 135 treatment of the patient, maintenance of adequate records,
 136 compilation of treatment data, aftercare planning, or evaluation
 137 of programs.

138 (c) For the purpose of determining whether a person meets
 139 the criteria for involuntary outpatient placement or for
 140 preparing the proposed treatment plan pursuant to s. 394.4655,
 141 the clinical record may be released to the state attorney, the
 142 public defender, or the patient's private legal counsel; to the
 143 court; and to the appropriate mental health professionals,
 144 including the service provider identified in s. 394.4655(6)(b)2.

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145 Section 4. Subsection (1) and paragraphs (e), (g), and (i)
 146 of subsection (2) of section 394.463, Florida Statutes, are
 147 amended to read:

148 394.463 Involuntary examination.--

149 (1) CRITERIA.--A person may be taken to a receiving
 150 facility for involuntary examination if there is reason to
 151 believe that the person has a mental illness ~~he or she is~~
 152 ~~mentally ill~~ and because of his or her mental illness:

153 (a)~~1~~. The person has refused voluntary examination after
 154 conscientious explanation and disclosure of the purpose of the
 155 examination; or

156 (b)~~2~~. The person is unable to determine for himself or
 157 herself whether examination is necessary; and

158 (c)~~(b)~~ Based upon the person's current reported or
 159 observed behavior, considering any mental health history, there
 160 is a substantial likelihood that without care or treatment:

161 1. ~~Without care or treatment,~~ The person will ~~is likely to~~
 162 suffer from neglect or refuse to care for himself or herself;
 163 such neglect or refusal will pose ~~poses~~ a real and present
 164 threat of substantial harm to his or her well-being; and it is
 165 not apparent that such harm may be avoided through the help of
 166 willing family members or friends or the provision of other
 167 services; or

168 2. ~~There is a substantial likelihood that without care or~~
 169 ~~treatment~~ The person will cause serious bodily harm to himself
 170 or herself or others in the near future, ~~as evidenced by recent~~
 171 ~~behavior.~~

172 (2) INVOLUNTARY EXAMINATION.--

173 (e) The Agency for Health Care Administration shall

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174 receive and maintain the copies of ex parte orders, involuntary
 175 outpatient placement orders issued pursuant to s.
 176 394.4655, involuntary inpatient orders issued pursuant to s.
 177 394.467, professional certificates, and law enforcement
 178 officers' reports. These documents shall be considered part of
 179 the clinical record, governed by the provisions of s. 394.4615.
 180 The agency shall prepare annual reports analyzing the data
 181 obtained from these documents, without information identifying
 182 patients, and shall provide copies of reports to the department,
 183 the President of the Senate, the Speaker of the House of
 184 Representatives, and the minority leaders of the Senate and the
 185 House of Representatives.

186 (g) A person for whom an involuntary examination has been
 187 initiated who is being evaluated or treated at a hospital for an
 188 emergency medical condition specified in s. 395.002 must be
 189 examined by a receiving facility within 72 hours. The 72-hour
 190 period begins when the patient arrives at the hospital and
 191 ceases when the attending physician documents that the patient
 192 has an emergency medical condition. If the patient is examined
 193 at a hospital providing emergency medical services by a
 194 professional qualified to perform an involuntary examination and
 195 is found as a result of that examination not to meet the
 196 criteria for involuntary outpatient placement pursuant to s.
 197 394.4655(1) or involuntary inpatient placement pursuant to s.
 198 394.467(1), the patient may be offered voluntary placement, if
 199 appropriate, or released directly from the hospital providing
 200 emergency medical services. The finding by the professional that
 201 the patient has been examined and does not meet the criteria for
 202 involuntary inpatient or involuntary outpatient placement must

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203 be entered into the patient's clinical record. Nothing in this
 204 paragraph is intended to prevent a hospital providing emergency
 205 medical services from appropriately transferring a patient to
 206 another hospital prior to stabilization, provided the
 207 requirements of s. 395.1041(3)(c) have been met.

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

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

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

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

222 4. A petition for involuntary placement shall be filed in
 223 the circuit ~~appropriate~~ court ~~by the facility administrator~~ when
 224 treatment is deemed necessary, ~~+~~ in which case, the least
 225 restrictive treatment consistent with the optimum improvement of
 226 the patient's condition shall be made available. A petition for
 227 involuntary outpatient placement shall be filed by one of the
 228 petitioners delineated in s. 394.4655(3)(a). A petition for
 229 involuntary inpatient placement shall be filed by the facility
 230 administrator.

231 Section 5. Section 394.4655, Florida Statutes, is created

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232 to read:

233 394.4655 Involuntary outpatient placement.--

234 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.--A

235 person may be ordered to involuntary outpatient placement upon a
 236 finding of the court that, by clear and convincing evidence:

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

238 (b) The person has a mental illness.

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

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

244 (e) The person has:

245 1. At least twice within the preceding 36 months been
 246 admitted for examination or placement in a receiving or
 247 treatment facility as defined in s. 394.455 or received mental
 248 health services in a forensic or correctional facility. The 36-
 249 month period does not include any period during which the person
 250 was admitted or incarcerated; or

251 2. Engaged in one or more acts of serious violent behavior
 252 toward himself or herself or others or engaged in attempts at
 253 serious bodily harm to himself or herself or others within the
 254 preceding 36 months.

255 (f) The person is, as a result of his or her mental
 256 illness, unlikely to voluntarily participate in the recommended
 257 treatment pursuant to the treatment plan.

258 (g) In view of the person's treatment history and current
 259 behavior, the person is in need of involuntary outpatient
 260 placement in order to prevent a relapse or deterioration which

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261 would be likely to result in meeting the involuntary examination
 262 criteria set forth in s. 394.463(1).

263 (h) It is likely that the person will benefit from
 264 involuntary outpatient placement.

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

268 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

269 (a) From a receiving facility.--A patient may be retained
 270 by a receiving facility upon the recommendation of the
 271 administrator of a receiving facility where the patient has been
 272 examined and after adherence to the notice and hearing
 273 procedures provided in s. 394.4599. The recommendation must be
 274 supported by the opinion of a psychiatrist and the second
 275 opinion of a clinical psychologist or another psychiatrist, both
 276 of whom have personally examined the patient within the
 277 preceding 72 hours, that the criteria for involuntary outpatient
 278 placement are met. However, in a county having a population of
 279 less than 50,000, if the administrator certifies that no
 280 psychiatrist or clinical psychologist is available to provide
 281 the second opinion, such second opinion may be provided by a
 282 licensed physician who has postgraduate training and experience
 283 in diagnosis and treatment of mental and nervous disorders or by
 284 a psychiatric nurse. Such recommendation shall be entered on an
 285 involuntary outpatient placement certificate, which certificate
 286 shall authorize the receiving facility to retain the patient
 287 pending transfer to involuntary outpatient placement or
 288 completion of a hearing. If the patient has been stabilized and
 289 no longer meets the criteria for involuntary examination

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290 pursuant to s. 394.463(1), the patient must be released from the
 291 receiving facility while awaiting the hearing for involuntary
 292 outpatient placement.

293 (b) Voluntary examination for outpatient placement.--A
 294 patient may choose to be examined on an outpatient basis for an
 295 involuntary outpatient placement certificate if such an
 296 arrangement can be made. The certificate must be supported by
 297 the opinion of a psychiatrist and the second opinion of a
 298 clinical psychologist or another psychiatrist, both of whom have
 299 personally examined the patient within the preceding 14 calendar
 300 days, that the criteria for involuntary outpatient placement are
 301 met. However, in a county having a population of less than
 302 50,000, if the psychiatrist certifies that no psychiatrist or
 303 clinical psychologist is available to provide the second
 304 opinion, the second opinion may be provided by a licensed
 305 physician who has postgraduate training and experience in
 306 diagnosis and treatment of mental and nervous disorders or by a
 307 psychiatric nurse.

308 (c) From a treatment facility.--If a patient in
 309 involuntary inpatient placement meets the criteria for
 310 involuntary outpatient placement, the administrator of the
 311 treatment facility may, prior to expiration of the period during
 312 which the treatment facility is authorized to retain the
 313 patient, recommend involuntary outpatient placement. The
 314 recommendation must be supported by the opinion of a
 315 psychiatrist and the second opinion of a clinical psychologist
 316 or another psychiatrist, both of whom have personally examined
 317 the patient within the preceding 72 hours, that the criteria for
 318 involuntary outpatient placement are met. However, in a county

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319 having a population of less than 50,000, if the administrator
 320 certifies that no psychiatrist or clinical psychologist is
 321 available to provide the second opinion, such second opinion may
 322 be provided by a licensed physician with postgraduate training
 323 and experience in diagnosis and treatment of mental and nervous
 324 disorders or by a psychiatric nurse. Such recommendation shall
 325 be entered on an involuntary outpatient placement certificate.

326 (3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.--

327 (a) A petition for involuntary outpatient placement may be
 328 filed by:

329 1. The administrator of the facility pursuant to paragraph

330 (2)(a);

331 2. One of the examining professionals for persons examined
 332 on a voluntary outpatient basis pursuant to paragraph (2)(b).

333 Upon filing the petition, the examining professional shall
 334 provide a copy of the petition to the administrator of the
 335 receiving facility or designated department representative that
 336 will identify the service provider for the involuntary

337 outpatient placement; or

338 3. The administrator of a treatment facility pursuant to
 339 paragraph (2)(c). Upon filing the petition, the administrator
 340 shall provide a copy of the petition to the administrator of the
 341 receiving facility or designated department representative that
 342 will identify the service provider for the involuntary
 343 outpatient placement.

344 (b) Each required criterion for involuntary outpatient
 345 placement must be alleged and substantiated in the petition for
 346 involuntary outpatient placement. A copy of the certificate
 347 recommending involuntary outpatient placement completed by a

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348 qualified professional specified in subsection (2) shall be
 349 attached to the petition.

350 (c) The petition for involuntary outpatient placement
 351 shall be filed in the county in which the patient is located.
 352 When the petition has been filed, the clerk of the court shall
 353 provide copies to the department, the patient, the patient's
 354 guardian or representative, and the state attorney and public
 355 defender of the judicial circuit in which the patient is
 356 located. A fee may not be charged for the filing of a petition
 357 under this subsection.

358 (4) APPOINTMENT OF COUNSEL.--Within 1 court working day
 359 after the filing of a petition for involuntary outpatient
 360 placement, the court shall appoint the public defender to
 361 represent the person who is the subject of the petition, unless
 362 the person is otherwise represented by counsel. The clerk of the
 363 court shall immediately notify the public defender of such
 364 appointment. The public defender shall represent the person
 365 until the petition is dismissed, the court order expires, or the
 366 patient is discharged from involuntary outpatient placement. Any
 367 attorney who represents the patient shall have access to the
 368 patient, witnesses, and records relevant to the presentation of
 369 the patient's case and shall represent the interests of the
 370 patient, regardless of the source of payment to the attorney.

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

375 (6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.--

376 (a)1. The court shall hold the hearing on involuntary

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377 outpatient placement within 5 days after the petition is filed,
378 unless a continuance is granted. The hearing shall be held in
379 the county in which the patient is located, shall be as
380 convenient to the patient as is consistent with orderly
381 procedure, and shall be conducted in physical settings not
382 likely to be injurious to the patient's condition. If the court
383 finds that the patient's attendance at the hearing is not
384 consistent with the best interests of the patient and the
385 patient's counsel does not object, the court may waive the
386 presence of the patient from all or any portion of the hearing.
387 The state attorney for the circuit in which the patient is
388 located shall represent the state, rather than the petitioner,
389 as the real party in interest in the proceeding.

390 2. The court may appoint a master to preside at the
391 hearing. One of the professionals who executed the involuntary
392 outpatient placement certificate shall be a witness. The patient
393 and the patient's guardian or representative shall be informed
394 by the court of the right to an independent expert examination.
395 If the patient cannot afford such an examination, the court
396 shall provide for one. The independent expert's report shall be
397 confidential and not discoverable, unless the expert is to be
398 called as a witness for the patient at the hearing. The court
399 shall allow testimony from individuals, including family
400 members, deemed by the court to be relevant under state law,
401 regarding the person's prior history and how that prior history
402 relates to the person's current condition. The testimony in the
403 hearing must be given under oath and the proceedings must be
404 recorded. The patient may refuse to testify at the hearing.

405 (b)1. If the court concludes that the patient meets the

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406 criteria for involuntary outpatient placement pursuant to
407 subsection (1), the court shall issue an order for involuntary
408 outpatient placement. The court order shall be for a period of
409 up to 6 months. The service provider shall discharge a patient
410 if there is a clinical determination that the patient no longer
411 meets the criteria for involuntary placement.

412 2. The administrator of a receiving facility or designated
413 department representative shall identify the service provider
414 that will have primary responsibility for service provision
415 under the order. The service provider shall prepare a written
416 proposed treatment plan and submit the plan to the court prior
417 to the hearing for the court's consideration for inclusion in
418 the involuntary outpatient placement order. The service provider
419 shall also provide a copy of the proposed treatment plan to the
420 petitioner. The treatment plan must specify the nature and
421 extent of the patient's mental illness. The treatment plan may
422 include provisions for case management, intensive case
423 management, or assertive community treatment or a program for
424 assertive community treatment. The treatment plan may also
425 require that the patient make use of a service provider to
426 supply any of the following categories of services to the
427 individual: medication, periodic urinalysis to determine
428 compliance with treatment, individual or group therapy, day or
429 partial-day programming activities, educational and vocational
430 training or activities, alcohol or substance abuse treatment and
431 counseling and periodic tests for the presence of alcohol or
432 illegal drugs for persons with a history of alcohol or substance
433 abuse, supervision of living arrangements, and any other
434 services prescribed to treat the person's mental illness and to

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435 assist the person in living and functioning in the community or
436 to attempt to prevent a relapse or deterioration. Service
437 providers may select and provide supervision to other
438 individuals, not enumerated in this subparagraph, to implement
439 specific aspects of the treatment plan, such as medication
440 monitoring. The services in the treatment plan shall be deemed
441 to be clinically appropriate by a physician, clinical
442 psychologist, psychiatric nurse, or clinical social worker who
443 consults with, or is employed or contracted by, the service
444 provider. The service provider must certify to the court in the
445 proposed treatment plan whether sufficient services for
446 improvement and stabilization are currently available and
447 whether the service provider agrees to provide those services.
448 If the service provider certifies that the services in the
449 proposed treatment plan are not available, then the petitioner
450 shall withdraw the petition. The court may not order the
451 department or the service provider to provide services if the
452 program or service is not available in the patient's local
453 community, there is no space available in the program or service
454 for the patient, or funding is not available for the program or
455 service. A copy of the order shall be sent to the Agency for
456 Health Care Administration. After the placement order is issued,
457 the service provider and the patient may modify provisions of
458 the treatment plan. For any material modification of the
459 treatment plan to which the patient or the patient's guardian
460 advocate, if appointed, does agree, the service provider shall
461 send notice of the modification to the court. Any material
462 modification of the treatment plan that is contested by the
463 patient must be approved by the court.

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464 3. If, in the clinical judgment of a physician, the
465 patient has failed or refused to comply with the treatment
466 ordered by the court, efforts were made to solicit compliance,
467 and the patient may meet the criteria for involuntary
468 examination, a person may be brought to a receiving facility
469 pursuant to s. 394.463. If, after examination, the patient does
470 not meet the criteria for involuntary inpatient placement
471 pursuant to s. 394.467, the patient must be discharged from the
472 receiving facility. The service provider must determine whether
473 modifications should be made to the existing treatment plan and
474 attempt to continue to engage the patient in treatment. For any
475 material modification of the treatment plan to which the patient
476 or the patient's guardian advocate, if appointed, does agree,
477 the service provider shall send notice of the modification to
478 the court. Any material modification of the treatment plan that
479 is contested by the patient or the patient's guardian advocate,
480 if appointed, must be approved by the court.

481 (c) If, at any time before the conclusion of the initial
482 hearing on involuntary outpatient placement, it appears to the
483 court that the person does not meet the criteria for involuntary
484 outpatient placement under this section but instead meets the
485 criteria for involuntary inpatient placement, the court may
486 order the person admitted for involuntary inpatient placement
487 pursuant to s. 394.467. If the person instead meets the criteria
488 for involuntary assessment, protective custody, or involuntary
489 admission pursuant to s. 397.675, the court may order the person
490 to be admitted for involuntary assessment for a period of 5 days
491 pursuant to s. 397.6811. Thereafter, all proceedings shall be
492 governed by chapter 397.

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493 (d) At the hearing on involuntary outpatient placement,
 494 the court shall consider testimony and evidence regarding the
 495 patient's competence to consent to treatment. If the court finds
 496 that the patient is incompetent to consent to treatment, the
 497 court shall appoint a guardian advocate as provided in s.
 498 394.4598. The guardian advocate shall be appointed or discharged
 499 in accordance with s. 394.4598.

500 (e) The administrator of the receiving facility or the
 501 designated department representative shall provide a copy of the
 502 court order and adequate documentation of a patient's mental
 503 illness to the service provider for involuntary outpatient
 504 placement. Such documentation must include any advance
 505 directives made by the patient, a psychiatric evaluation of the
 506 patient, and any evaluations of the patient performed by a
 507 clinical psychologist or a clinical social worker.

508 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
 509 PLACEMENT.--

510 (a) If the person continues to meet the criteria for
 511 involuntary outpatient placement, the service provider shall,
 512 prior to the expiration of the period during which the treatment
 513 is ordered for the person, file in the circuit court a continued
 514 involuntary outpatient placement certificate which shall be
 515 accompanied by a statement from the person's physician or
 516 clinical psychologist justifying the request, a brief
 517 description of the patient's treatment during the time he or she
 518 was involuntarily placed, and an individualized plan of
 519 continued treatment.

520 (b) Within 1 court working day after the filing of a
 521 petition for continued involuntary outpatient placement, the

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522 court shall appoint the public defender to represent the person
 523 who is the subject of the petition, unless the person is
 524 otherwise represented by counsel. The clerk of the court shall
 525 immediately notify the public defender of such appointment. The
 526 public defender shall represent the person until the petition is
 527 dismissed, the court order expires, or the patient is discharged
 528 from involuntary outpatient placement. Any attorney representing
 529 the patient shall have access to the patient, witnesses, and
 530 records relevant to the presentation of the patient's case and
 531 shall represent the interests of the patient, regardless of the
 532 source of payment to the attorney.

533 (c) Hearings on petitions for continued involuntary
 534 outpatient placement shall be before the circuit court. The
 535 court may appoint a master to preside at the hearing. The
 536 procedures for obtaining an order pursuant to this paragraph
 537 shall be in accordance with the provisions of subsection (6),
 538 except that the time period included in paragraph (1)(e) is not
 539 applicable in determining the appropriateness of additional
 540 periods of involuntary outpatient placement.

541 (d) Notice of the hearing shall be provided as set forth
 542 in s. 394.4599.

543 (e) The same procedure shall be repeated prior to the
 544 expiration of each additional period the patient is placed in
 545 treatment.

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

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551 Section 6. Section 394.467, Florida Statutes, is amended
 552 to read:

553 394.467 Involuntary inpatient placement.--

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

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

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

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

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

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

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

578 (2) ADMISSION TO A TREATMENT FACILITY.--A patient may be
 579 retained by a receiving facility or involuntarily placed in a

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580 treatment facility upon the recommendation of the administrator
 581 of a receiving facility where the patient has been examined and
 582 after adherence to the notice and hearing procedures provided in
 583 s. 394.4599. The recommendation must be supported by the opinion
 584 of a psychiatrist and the second opinion of a clinical
 585 psychologist or another psychiatrist, both of whom have
 586 personally examined the patient within the preceding 72 hours,
 587 that the criteria for involuntary inpatient placement are met.
 588 However, in counties of less than 50,000 population, if the
 589 administrator certifies that no psychiatrist or clinical
 590 psychologist is available to provide the second opinion, such
 591 second opinion may be provided by a licensed physician with
 592 postgraduate training and experience in diagnosis and treatment
 593 of mental and nervous disorders or by a psychiatric nurse. Such
 594 recommendation shall be entered on an involuntary inpatient
 595 placement certificate, which certificate shall authorize the
 596 receiving facility to retain the patient pending transfer to a
 597 treatment facility or completion of a hearing.

598 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.--The
 599 administrator of the facility shall file a petition for
 600 involuntary inpatient placement in the court in the county where
 601 the patient is located. Upon filing, the clerk of the court
 602 shall provide copies to the department, the patient, the
 603 patient's guardian or representative, and the state attorney and
 604 public defender of the judicial circuit in which the patient is
 605 located. No fee shall be charged for the filing of a petition
 606 under this subsection.

607 (4) APPOINTMENT OF COUNSEL.--Within 1 court working day
 608 after the filing of a petition for involuntary inpatient

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609 placement, the court shall appoint the public defender to
 610 represent the person who is the subject of the petition, unless
 611 the person is otherwise represented by counsel. The clerk of the
 612 court shall immediately notify the public defender of such
 613 appointment. Any attorney representing the patient shall have
 614 access to the patient, witnesses, and records relevant to the
 615 presentation of the patient's case and shall represent the
 616 interests of the patient, regardless of the source of payment to
 617 the attorney.

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

622 (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.--

623 (a)1. The court shall hold the hearing on involuntary
 624 inpatient placement within 5 days, unless a continuance is
 625 granted. The hearing shall be held in the county where the
 626 patient is located and shall be as convenient to the patient as
 627 may be consistent with orderly procedure and shall be conducted
 628 in physical settings not likely to be injurious to the patient's
 629 condition. If the court finds that the patient's attendance at
 630 the hearing is not consistent with the best interests of the
 631 patient, and the patient's counsel does not object, the court
 632 may waive the presence of the patient from all or any portion of
 633 the hearing. The state attorney for the circuit in which the
 634 patient is located shall represent the state, rather than the
 635 petitioning facility administrator, as the real party in
 636 interest in the proceeding.

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637 2. The court may appoint a master to preside at the
638 hearing. One of the professionals who executed the involuntary
639 inpatient placement certificate shall be a witness. The patient
640 and the patient's guardian or representative shall be informed
641 by the court of the right to an independent expert examination.
642 If the patient cannot afford such an examination, the court
643 shall provide for one. The independent expert's report shall be
644 confidential and not discoverable, unless the expert is to be
645 called as a witness for the patient at the hearing. The
646 testimony in the hearing must be given under oath, and the
647 proceedings must be recorded. The patient may refuse to testify
648 at the hearing.

649 (b) If the court concludes that the patient meets the
650 criteria for involuntary inpatient placement, it shall order
651 that the patient be transferred to a treatment facility or, if
652 the patient is at a treatment facility, that the patient be
653 retained there or be treated at any other appropriate receiving
654 or treatment facility, or that the patient receive services from
655 a receiving or treatment facility, on an involuntary basis, for
656 a period of up to 6 months. The order shall specify the nature
657 and extent of the patient's mental illness. The facility shall
658 discharge a patient any time the patient no longer meets the
659 criteria for involuntary inpatient placement, unless the patient
660 has transferred to voluntary status.

661 (c) If at any time prior to the conclusion of the hearing
662 on involuntary inpatient placement it appears to the court that
663 the person does not meet the criteria for involuntary inpatient
664 placement under this section ~~chapter~~, but instead meets the
665 criteria for involuntary outpatient placement, the court may

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666 order the person evaluated for involuntary outpatient placement
 667 pursuant to s. 394.4655. The petition and hearing procedures set
 668 forth in s. 394.4655 shall apply. If the person instead meets
 669 the criteria for involuntary assessment, protective custody, or
 670 involuntary admission pursuant to s. 397.675, then the court may
 671 order the person to be admitted for involuntary assessment for a
 672 period of 5 days pursuant to s. 397.6811. Thereafter, all
 673 proceedings shall be governed by chapter 397.

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

679 (e) The administrator of the receiving facility shall
 680 provide a copy of the court order and adequate documentation of
 681 a patient's mental illness to the administrator of a treatment
 682 facility whenever a patient is ordered for involuntary inpatient
 683 placement, whether by civil or criminal court. Such
 684 documentation shall include any advance directives made by the
 685 patient, a psychiatric evaluation of the patient, and any
 686 evaluations of the patient performed by a clinical psychologist
 687 or a clinical social worker. The administrator of a treatment
 688 facility may refuse admission to any patient directed to its
 689 facilities on an involuntary basis, whether by civil or criminal
 690 court order, who is not accompanied at the same time by adequate
 691 orders and documentation.

692 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
 693 PLACEMENT.--

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694 (a) Hearings on petitions for continued involuntary
695 inpatient placement shall be administrative hearings and shall
696 be conducted in accordance with the provisions of s. 120.57(1),
697 except that any order entered by the hearing officer shall be
698 final and subject to judicial review in accordance with s.
699 120.68. Orders concerning patients committed after successfully
700 pleading not guilty by reason of insanity shall be governed by
701 the provisions of s. 916.15.

702 (b) If the patient continues to meet the criteria for
703 involuntary inpatient placement, the administrator shall, prior
704 to the expiration of the period during which the treatment
705 facility is authorized to retain the patient, file a petition
706 requesting authorization for continued involuntary inpatient
707 placement. The request shall be accompanied by a statement from
708 the patient's physician or clinical psychologist justifying the
709 request, a brief description of the patient's treatment during
710 the time he or she was involuntarily placed, and an
711 individualized plan of continued treatment. Notice of the
712 hearing shall be provided as set forth in s. 394.4599. If at the
713 hearing the hearing officer finds that attendance at the hearing
714 is not consistent with the best interests of the patient, the
715 hearing officer may waive the presence of the patient from all
716 or any portion of the hearing, unless the patient, through
717 counsel, objects to the waiver of presence. The testimony in the
718 hearing must be under oath, and the proceedings must be
719 recorded.

720 (c) Unless the patient is otherwise represented or is
721 ineligible, he or she shall be represented at the hearing on the

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722 petition for continued involuntary inpatient placement by the
723 public defender of the circuit in which the facility is located.

724 (d) If at a hearing it is shown that the patient continues
725 to meet the criteria for involuntary inpatient placement, the
726 administrative law judge shall sign the order for continued
727 involuntary inpatient placement for a period not to exceed 6
728 months. The same procedure shall be repeated prior to the
729 expiration of each additional period the patient is retained.

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

737 (f) If the patient has been previously found incompetent
738 to consent to treatment, the hearing officer shall consider
739 testimony and evidence regarding the patient's competence. If
740 the hearing officer finds evidence that the patient is now
741 competent to consent to treatment, the hearing officer may issue
742 a recommended order to the court that found the patient
743 incompetent to consent to treatment that the patient's
744 competence be restored and that any guardian advocate previously
745 appointed be discharged.

746 (8) RETURN OF PATIENTS.--When a patient at a treatment
747 facility leaves the facility without authorization, the
748 administrator may authorize a search for the patient and the
749 return of the patient to the facility. The administrator may

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750 request the assistance of a law enforcement agency in the search
 751 for and return of the patient.

752 Section 7. Paragraphs (a) and (c) of subsection (3) of
 753 section 394.495, Florida Statutes, are amended to read:

754 394.495 Child and adolescent mental health system of care;
 755 programs and services.--

756 (3) Assessments must be performed by:

757 (a) A professional as defined in s. 394.455(2), (4),
 758 (22)~~(21)~~, (24)~~(23)~~, or (25)~~(24)~~;

759 (c) A person who is under the direct supervision of a
 760 professional as defined in s. 394.455(2), (4), (22)~~(21)~~,
 761 (24)~~(23)~~, or (25)~~(24)~~ or a professional licensed under chapter
 762 491.

763
 764 The department shall adopt by rule statewide standards for
 765 mental health assessments, which must be based on current
 766 relevant professional and accreditation standards.

767 Section 8. Subsection (6) of section 394.496, Florida
 768 Statutes, is amended to read:

769 394.496 Service planning.--

770 (6) A professional as defined in s. 394.455(2), (4),
 771 (22)~~(21)~~, (24)~~(23)~~, or (25)~~(24)~~ or a professional licensed under
 772 chapter 491 must be included among those persons developing the
 773 services plan.

774 Section 9. Paragraphs (a) and (c) of subsection (4) of
 775 section 394.498, Florida Statutes, are amended to read:

776 394.498 Child and Adolescent Interagency System of Care
 777 Demonstration Models.--

778 (4) ESSENTIAL ELEMENTS.--

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779 (a) In order to be approved as a Child and Adolescent
 780 Interagency System of Care Demonstration Model, the applicant
 781 must demonstrate its capacity to perform the following
 782 functions:

783 1. Form a consortium of purchasers, which includes at
 784 least three of the following agencies:

785 a. The Mental Health Program and Family Safety and
 786 Preservation Program of the Department of Children and Family
 787 Services.

788 b. The Medicaid program of the Agency for Health Care
 789 Administration.

790 c. The local school district.

791 d. The Department of Juvenile Justice.

792
 793 Each agency that participates in the consortium shall enter into
 794 a written interagency agreement that defines each agency's
 795 responsibilities.

796 2. Establish an oversight body that is responsible for
 797 directing the demonstration model. The oversight body must
 798 include representatives from the state agencies that comprise
 799 the consortium of purchasers under subparagraph 1., as well as
 800 local governmental entities, a juvenile court judge, parents,
 801 and other community entities. The responsibilities of the
 802 oversight body must be specified in writing.

803 3. Select a target population of children and adolescents,
 804 regardless of whether the child or adolescent is eligible or
 805 ineligible for Medicaid, based on the following parameters:

806 a. The child or adolescent has a serious emotional
 807 disturbance or mental illness, as defined in s. 394.492(6),

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808 based on an assessment conducted by a licensed practitioner
 809 defined in s. 394.455(2), (4), (22)~~(21)~~, (24)~~(23)~~, or (25)~~(24)~~
 810 or by a professional licensed under chapter 491;

811 b. The total service costs per child or adolescent have
 812 exceeded \$3,000 per month;

813 c. The child or adolescent has had multiple out-of-home
 814 placements;

815 d. The existing array of services does not effectively
 816 meet the needs of the child or adolescent;

817 e. The case of the child or adolescent has been staffed by
 818 a district collaborative planning team and satisfactory results
 819 have not been achieved through existing case services plans; and

820 f. The parent or legal guardian of the child or adolescent
 821 consents to participating in the demonstration model.

822 4. Select a geographic site for the demonstration model. A
 823 demonstration model may be comprised of one or more counties and
 824 may include multiple service districts of the Department of
 825 Children and Family Services.

826 5. Develop a mechanism for selecting the pool of children
 827 and adolescents who meet the criteria specified in this section
 828 for participating in the demonstration model.

829 6. Establish a pooled funding plan that allocates
 830 proportionate costs to the purchasers. The plan must address all
 831 of the service needs of the child or adolescent, and funds may
 832 not be identified in the plan by legislative appropriation
 833 category or any other state or federal funding category.

834 a. The funding plan shall be developed based on an
 835 analysis of expenditures made by each participating state agency
 836 during the previous 2 fiscal years in which services were

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837 provided for the target population or for individuals who have
 838 characteristics that are similar to the target population.

839 b. Based on the results of this cost analysis, funds shall
 840 be collected from each of the participating state agencies and
 841 deposited into a central financial account.

842 c. A financial body shall be designated to manage the pool
 843 of funds and shall have the capability to pay for individual
 844 services specified in a services plan.

845 7. Identify a care management entity that reports to the
 846 oversight body. For purposes of the demonstration models, the
 847 term "care management entity" means the entity that assumes
 848 responsibility for the organization, planning, purchasing, and
 849 management of mental health treatment services to the target
 850 population in the demonstration model. The care management
 851 entity may not provide direct services to the target population.
 852 The care management entity shall:

853 a. Manage the funds of the demonstration model within
 854 budget allocations. The administrative costs associated with the
 855 operation of the demonstration model must be itemized in the
 856 entity's operating budget.

857 b. Purchase individual services in a timely manner.

858 c. Review the completed client assessment information and
 859 complete additional assessments that are needed, including an
 860 assessment of the strengths of the child or adolescent and his
 861 or her family.

862 d. Organize a child-family team to develop a single,
 863 unified services plan for the child or adolescent, in accordance
 864 with ss. 394.490-394.497. The team shall include the parents and
 865 other family members of the child or adolescent, friends and

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866 community-based supporters of the child or adolescent, and
867 appropriate service providers who are familiar with the problems
868 and needs of the child or adolescent and his or her family. The
869 plan must include a statement concerning the strengths of the
870 child or adolescent and his or her family, and must identify the
871 natural supports in the family and the community that might be
872 used in addressing the service needs of the child or adolescent.
873 A copy of the completed service plan shall be provided to the
874 parents of the child or adolescent.

875 e. Identify a network of providers that meet the
876 requirements of paragraph (b).

877 f. Identify informal, unpaid supporters, such as persons
878 from the child's or adolescent's neighborhood, civic
879 organizations, clubs, and churches.

880 g. Identify additional service providers who can work
881 effectively with the child or adolescent and his or her family,
882 including, but not limited to, a home health aide, mentor,
883 respite care worker, and in-home behavioral health care worker.

884 h. Implement a case management system that concentrates on
885 the strengths of the child or adolescent and his or her family
886 and uses these strengths in case planning and implementation
887 activities. The case manager is primarily responsible for
888 developing the services plan and shall report to the care
889 management entity. The case manager shall monitor and oversee
890 the services provided by the network of providers. The parents
891 must be informed about contacting the care management entity or
892 comparable entity to address concerns of the parents.

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894 Each person or organization that performs any of the care
 895 management responsibilities specified in this subparagraph is
 896 responsible only to the care management entity. However, such
 897 care management responsibilities do not preclude the person or
 898 organization from performing other responsibilities for another
 899 agency or provider.

900 8. Develop a mechanism for measuring compliance with the
 901 goals of the demonstration models specified in subsection (2),
 902 which mechanism includes qualitative and quantitative
 903 performance outcomes, report on compliance rates, and conduct
 904 quality improvement functions. At a minimum, the mechanism for
 905 measuring compliance must include the outcomes and measures
 906 established in the General Appropriations Act and the outcomes
 907 and measures that are unique to the demonstration models.

908 9. Develop mechanisms to ensure that family
 909 representatives have a substantial role in planning the
 910 demonstration model and in designing the instrument for
 911 measuring the effectiveness of services provided.

912 10. Develop and monitor grievance procedures.

913 11. Develop policies to ensure that a child or adolescent
 914 is not rejected or ejected from the demonstration model because
 915 of a clinical condition or a specific service need.

916 12. Develop policies to require that a participating state
 917 agency remains a part of the demonstration model for its entire
 918 duration.

919 13. Obtain training for the staff involved in all aspects
 920 of the project.

921 (c) In order for children, adolescents, and families of
 922 children and adolescents to receive timely and effective

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923 services, the basic provider network identified in each
 924 demonstration model must be well designed and managed. The
 925 provider network should be able to meet the needs of a
 926 significant proportion of the target population. The applicant
 927 must demonstrate the capability to manage the network of
 928 providers for the purchasers that participate in the
 929 demonstration model. The applicant must demonstrate its ability
 930 to perform the following network management functions:

931 1. Identify providers within the designated area of the
 932 demonstration model which are currently funded by the state
 933 agencies included in the model, and identify additional
 934 providers that are needed to provide additional services for the
 935 target population. The network of providers may include:

936 a. Licensed mental health professionals as defined in s.
 937 394.455(2), (4), (22)~~(21)~~, (24)~~(23)~~, or (25)~~(24)~~;

938 b. Professionals licensed under chapter 491;

939 c. Teachers certified under s. 1012.56;

940 d. Facilities licensed under chapter 395, as a hospital;
 941 s. 394.875, as a crisis stabilization unit or short-term
 942 residential facility; or s. 409.175, as a residential child-
 943 caring agency; and

944 e. Other community agencies.

945 2. Define access points and service linkages of providers
 946 in the network.

947 3. Define the ways in which providers and participating
 948 state agencies are expected to collaborate in providing
 949 services.

950 4. Define methods to measure the collective performance
 951 outcomes of services provided by providers and state agencies,

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952 measure the performance of individual agencies, and implement a
 953 quality improvement process across the provider network.

954 5. Develop brochures for family members which are written
 955 in understandable terminology, to help families identify
 956 appropriate service providers, choose the provider, and access
 957 care directly whenever possible.

958 6. Ensure that families are given a substantial role in
 959 planning and monitoring the provider network.

960 7. Train all providers with respect to the principles of
 961 care outlined in this section, including effective techniques of
 962 cooperation, the wraparound process and strengths-based
 963 assessment, the development of service plans, and techniques of
 964 case management.

965 Section 10. Paragraph (d) of subsection (1) of section
 966 419.001, Florida Statutes, is amended to read:

967 419.001 Site selection of community residential homes.--

968 (1) For the purposes of this section, the following
 969 definitions shall apply:

970 (d) "Resident" means any of the following: a frail elder
 971 as defined in s. 400.618; a physically disabled or handicapped
 972 person as defined in s. 760.22(7)(a); a developmentally disabled
 973 person as defined in s. 393.063(12); a nondangerous mentally ill
 974 person as defined in s. 394.455(19)(~~18~~); or a child as defined
 975 in s. 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).

976 Section 11. Subsection (7) of section 744.704, Florida
 977 Statutes, is amended to read:

978 744.704 Powers and duties.--

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979 (7) A public guardian shall not commit a ward to a mental
 980 health treatment facility, as defined in s. 394.455~~(32)~~~~(30)~~,
 981 without an involuntary placement proceeding as provided by law.

982 Section 12. The Department of Children and Family Services
 983 may adopt any rules necessary to implement the provisions of
 984 this act.

985 Section 13. If any provision of this act or its
 986 application to any person or circumstance is held invalid, the
 987 invalidity does not affect other provisions or applications of
 988 the act which can be given effect without the invalid provision
 989 or application, and to this end the provisions of this act are
 990 severable.

991 Section 14. This act shall take effect October 1, 2004.