

By the Committees on Judiciary; Children and Families; and
Senators Peaden, Fasano, Campbell, Smith and Lynn

308-2114-04

1 A bill to be entitled
2 An act relating to mental health; amending s.
3 394.455, F.S.; defining and redefining terms
4 used in part I of ch. 394, F.S., "the Baker
5 Act"; amending s. 394.4598, F.S., relating to
6 guardian advocates; amending provisions to
7 conform to changes made by the act; amending s.
8 394.4615, F.S., relating to confidentiality of
9 clinical records; providing additional
10 circumstances in which information from a
11 clinical record may be released; amending s.
12 394.463, F.S.; revising criteria for an
13 involuntary examination; revising requirements
14 for filing a petition for involuntary
15 placement; creating s. 394.4655, F.S.;
16 providing for involuntary outpatient placement;
17 providing criteria; providing procedures;
18 providing for a voluntary examination for
19 outpatient placement; providing for a petition
20 for involuntary outpatient placement; requiring
21 the appointment of counsel; providing for a
22 continuance of hearing; providing procedures
23 for the hearing on involuntary outpatient
24 placement; providing a procedure for continued
25 involuntary outpatient placement; amending s.
26 394.467, F.S., relating to involuntary
27 placement; conforming terminology to changes
28 made by the act; providing for rulemaking
29 authority; providing for severability;
30 providing an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Subsection (3) of section 394.455, Florida
4 Statutes, is amended, and subsections (31) and (32) are added
5 to that section, to read:

6 394.455 Definitions.--As used in this part, unless the
7 context clearly requires otherwise, the term:

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

13 (31) "Service provider" means any public or private
14 receiving facility, an entity under contract with the
15 Department of Children and Family Services to provide mental
16 health services, a clinical psychologist, a clinical social
17 worker, a physician, a nurse providing psychiatric services
18 consistent with chapter 464, or a community mental health
19 center or clinic as defined in this part.

20 (32) "Involuntary examination" means an examination
21 performed under s. 394.463 to determine if an individual
22 qualifies for involuntary inpatient treatment under s.
23 394.467(1) or involuntary outpatient treatment under s.
24 394.4655(1).

25 (33) "Involuntary placement" means either involuntary
26 outpatient treatment pursuant to s. 394.4655 or involuntary
27 inpatient treatment pursuant to s. 394.467.

28 Section 2. Subsections (1) and (7) of section
29 394.4598, Florida Statutes, are amended to read:

30 394.4598 Guardian advocate.--

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1 (1) The administrator may petition the court for the
2 appointment of a guardian advocate based upon the opinion of a
3 psychiatrist that the patient is incompetent to consent to
4 treatment. If the court finds that a patient is incompetent to
5 consent to treatment and has not been adjudicated
6 incapacitated and a guardian with the authority to consent to
7 mental health treatment appointed, it shall appoint a guardian
8 advocate. The patient has the right to have an attorney
9 represent him or her at the hearing. If the person is
10 indigent, the court shall appoint the office of the public
11 defender to represent him or her at the hearing. The patient
12 has the right to testify, cross-examine witnesses, and present
13 witnesses. The proceeding shall be recorded either
14 electronically or stenographically, and testimony shall be
15 provided under oath. One of the professionals authorized to
16 give an opinion in support of a petition for involuntary
17 placement, as described in s. 394.4655 or s. 394.467(2), must
18 testify. A guardian advocate must meet the qualifications of a
19 guardian contained in part IV of chapter 744, except that a
20 professional referred to in this part, an employee of the
21 facility providing direct services to the patient under this
22 part, a departmental employee, a facility administrator, or
23 member of the Florida local advocacy council shall not be
24 appointed. A person who is appointed as a guardian advocate
25 must agree to the appointment.

26 (7) The guardian advocate shall be discharged when the
27 patient is discharged from an order for involuntary outpatient
28 placement or involuntary inpatient placement ~~a receiving or~~
29 ~~treatment facility to the community~~ or when the patient is
30 transferred from involuntary to voluntary status. The court or
31 a hearing officer shall consider the competence of the patient

1 pursuant to subsection (1) and may consider an involuntarily
2 placed patient's competence to consent to treatment at any
3 hearing. Upon sufficient evidence, the court may restore, or
4 the hearing officer may recommend that the court restore, the
5 patient's competence. A copy of the order restoring competence
6 or the certificate of discharge containing the restoration of
7 competence shall be provided to the patient and the guardian
8 advocate.

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

11 394.4615 Clinical records; confidentiality.--

12 (3) Information from the clinical record may be
13 released in the following circumstances ~~when~~:

14 (a) When a patient has declared an intention to harm
15 other persons. When such declaration has been made, the
16 administrator may authorize the release of sufficient
17 information to provide adequate warning to the person
18 threatened with harm by the patient.

19 (b) When the administrator of the facility or
20 secretary of the department deems release to a qualified
21 researcher as defined in administrative rule, an aftercare
22 treatment provider, or an employee or agent of the department
23 is necessary for treatment of the patient, maintenance of
24 adequate records, compilation of treatment data, aftercare
25 planning, or evaluation of programs.

26
27 For the purpose of determining whether a person meets the
28 criteria for involuntary outpatient placement or for preparing
29 the proposed treatment plan pursuant to s. 394.4655, the
30 clinical record may be released to the state attorney, the
31 public defender or the patient's private legal counsel, the

1 court, and to the appropriate mental health professionals,
2 including the service provider identified in s.
3 394.4655(6)(b)2., in accordance with state and federal law.

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

7 394.463 Involuntary examination.--

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

12 (a)~~1~~. The person has refused voluntary examination
13 after conscientious explanation and disclosure of the purpose
14 of the examination; or

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

17 (c)~~(b)~~ Based on the person's current reported or
18 observed behavior, considering any mental health history,
19 there is a substantial likelihood that without care or
20 treatment:

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

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

1 (2) INVOLUNTARY EXAMINATION.--

2 (e) The Agency for Health Care Administration shall
3 receive and maintain the copies of ex parte orders,
4 involuntary outpatient placement orders issued pursuant to s.
5 394.4655, involuntary inpatient placement orders issued
6 pursuant to s. 394.467,professional certificates, and law
7 enforcement officers' reports. These documents shall be
8 considered part of the clinical record, governed by the
9 provisions of s. 394.4615. The agency shall prepare annual
10 reports analyzing the data obtained from these documents,
11 without information identifying patients, and shall provide
12 copies of reports to the department, the President of the
13 Senate, the Speaker of the House of Representatives, and the
14 minority leaders of the Senate and the House of
15 Representatives.

16 (g) A person for whom an involuntary examination has
17 been initiated who is being evaluated or treated at a hospital
18 for an emergency medical condition specified in s. 395.002
19 must be examined by a receiving facility within 72 hours. The
20 72-hour period begins when the patient arrives at the hospital
21 and ceases when the attending physician documents that the
22 patient has an emergency medical condition. If the patient is
23 examined at a hospital providing emergency medical services by
24 a professional qualified to perform an involuntary examination
25 and is found as a result of that examination not to meet the
26 criteria for involuntary outpatient placement pursuant to s.
27 394.4655(1) or involuntary inpatient placement pursuant to s.
28 394.467(1), the patient may be offered voluntary placement, if
29 appropriate, or released directly from the hospital providing
30 emergency medical services. The finding by the professional
31 that the patient has been examined and does not meet the

1 criteria for involuntary inpatient placement or involuntary
2 outpatient placement must be entered into the patient's
3 clinical record. Nothing in this paragraph is intended to
4 prevent a hospital providing emergency medical services from
5 appropriately transferring a patient to another hospital prior
6 to stabilization, provided the requirements of s.
7 395.1041(3)(c) have been met.

8 (i) Within the 72-hour examination period or, if the
9 72 hours ends on a weekend or holiday, no later than the next
10 working day thereafter, one of the following actions must be
11 taken, based on the individual needs of the patient:

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

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

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

23 4. If treatment is deemed necessary and the patient
24 has failed to consent to voluntary inpatient or outpatient
25 treatment, a petition for involuntary placement must be filed
26 in the circuit court. The petition must seek involuntary
27 placement of the patient in the least restrictive treatment
28 consistent with the optimum improvement of the patient's
29 condition. A petition for involuntary outpatient placement
30 shall be filed by one of the petitioners specified in s.
31 394.4655(3)(a). A petition for involuntary inpatient placement

1 shall be filed by the facility administrator. ~~A petition for~~
2 ~~involuntary placement shall be filed in the appropriate court~~
3 ~~by the facility administrator when treatment is deemed~~
4 ~~necessary; in which case, the least restrictive treatment~~
5 ~~consistent with the optimum improvement of the patient's~~
6 ~~condition shall be made available.~~

7 Section 5. Section 394.4655, Florida Statutes, is
8 created to read:

9 394.4655 Involuntary outpatient placement.--

10 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.--A
11 person may be ordered to involuntary outpatient placement upon
12 a finding of the court that by clear and convincing evidence:

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

14 (b) The person has a mental illness;

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

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

20 (e) The person has:

21 1. At least twice within the immediately preceding 36
22 months been involuntarily admitted to a receiving or treatment
23 facility as defined in s. 394.455, or has received mental
24 health services in a forensic or correctional facility. The
25 36-month period does not include any period during which the
26 person was admitted or incarcerated; or

27 2. Engaged in one or more acts of serious violent
28 behavior toward self or others, or attempts at serious bodily
29 harm to himself or herself or others, within the preceding 36
30 months;

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1 (f) The person is, as a result of his or her mental
2 illness, unlikely to voluntarily participate in the
3 recommended treatment pursuant to the treatment plan;

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

10 (h) It is likely that the person will benefit from
11 involuntary outpatient placement; and

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

15 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

16 (a) From a receiving facility.--A patient may be
17 retained by a receiving facility upon the recommendation of
18 the administrator of a receiving facility where the patient
19 has been examined and after adherence to the notice of hearing
20 procedures provided in s. 394.4599. The recommendation must be
21 supported by the opinion of a psychiatrist and the second
22 opinion of a clinical psychologist or another psychiatrist,
23 both of whom have personally examined the patient within the
24 preceding 72 hours, that the criteria for involuntary
25 outpatient placement are met. However, in a county having a
26 population of fewer than 50,000, if the administrator
27 certifies that no psychiatrist or clinical psychologist is
28 available to provide the second opinion, the second opinion
29 may be provided by a licensed physician who has postgraduate
30 training and experience in diagnosis and treatment of mental
31 and nervous disorders or by a nurse providing psychiatric

1 services consistent with chapter 464. Such a recommendation
2 must be entered on an involuntary outpatient placement
3 certificate, which certificate must authorize the receiving
4 facility to retain the patient pending completion of a
5 hearing. If the patient has been stabilized and no longer
6 meets the criteria for involuntary examination pursuant to s.
7 394.463(1), the patient must be released from the receiving
8 facility while awaiting the hearing for involuntary outpatient
9 placement.

10 (b) Voluntary examination for outpatient
11 placement.--If such an arrangement can be made, a patient may
12 choose to be examined on an outpatient basis for an
13 involuntary outpatient placement certificate. The certificate
14 must be supported by the opinion of a psychiatrist and the
15 second opinion of a clinical psychologist or another
16 psychiatrist, both of whom have personally examined the
17 patient within the preceding 7 calendar days, that the
18 criteria for involuntary outpatient placement are met.
19 However, in a county having a population of fewer than 50,000,
20 if the psychiatrist certifies that no psychiatrist or clinical
21 psychologist is available to provide the second opinion, the
22 second opinion may be provided by a licensed physician who has
23 postgraduate training and experience in diagnosis and
24 treatment of mental and nervous disorders or by a nurse
25 providing psychiatric services consistent with chapter 464.

26 (c) From a treatment facility.--If a patient in
27 involuntary inpatient placement meets the criteria for
28 involuntary outpatient placement, the administrator of the
29 treatment facility may, before the expiration of the period
30 during which the treatment facility is authorized to retain
31 the patient, recommend involuntary outpatient placement. The

1 recommendation must be supported by the opinion of a
2 psychiatrist and the second opinion of a clinical psychologist
3 or another psychiatrist, both of whom have personally examined
4 the patient within the preceding 72 hours, that the criteria
5 for involuntary outpatient placement are met. However, in a
6 county having a population of fewer than 50,000, if the
7 administrator certifies that no psychiatrist or clinical
8 psychologist is available to provide the second opinion, the
9 second opinion may be provided by a licensed physician who has
10 postgraduate training and experience in diagnosis and
11 treatment of mental and nervous disorders or by a nurse
12 providing psychiatric services consistent with chapter 464.
13 Such a recommendation must be entered on an involuntary
14 outpatient placement certificate.

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

16 (a) A petition for involuntary outpatient placement
17 may be filed by:

18 1. The administrator of a receiving facility pursuant
19 to paragraph (2)(a);

20 2. One of the examining professionals for persons
21 examined on a voluntary outpatient basis pursuant to paragraph
22 (2)(b). Upon filing the petition, the examining professional
23 shall provide a copy of the petition to the administrator of
24 the receiving facility or designated department representative
25 that will identify the service provider for the involuntary
26 outpatient placement unless the person is otherwise
27 participating in outpatient psychiatric treatment and is not
28 in need of public financing for that treatment, in which case
29 the individual, if eligible, may be involuntarily committed to
30 the existing psychiatric treatment relationship; or

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1 3. The administrator of a treatment facility pursuant
2 to paragraph (2)(c). Upon filing the petition, the
3 administrator shall provide a copy of the petition to the
4 administrator of the receiving facility or designated
5 department representative that will identify the service
6 provider for the involuntary outpatient placement unless the
7 person is otherwise participating in outpatient psychiatric
8 treatment and is not in need of public financing for that
9 treatment, in which case the individual, if eligible, may be
10 involuntarily committed to the existing psychiatric treatment
11 relationship.

12 (b) Each required criterion for involuntary outpatient
13 placement must be alleged and substantiated in the petition
14 for involuntary outpatient placement. A copy of the
15 certificate recommending involuntary outpatient placement
16 completed by a qualified professional specified in subsection
17 (2) must be attached to the petition. A copy of the treatment
18 plan specified in subparagraph (6)(b)2. must be attached to
19 the petition. At the time the petition is filed, the service
20 provider shall certify that the services in the proposed
21 treatment plan are available. If the necessary services are
22 not available in the patient's local community to respond to
23 the person's individual needs, the petition may not be filed.

24 (c) The petition for involuntary outpatient placement
25 must be filed in the county where the patient is located. When
26 the petition has been filed, the clerk of the court shall
27 provide copies of the petition and the proposed treatment plan
28 to the department, the patient, the patient's guardian or
29 representative, and the state attorney and public defender of
30 the judicial circuit in which the patient is located. A fee
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1 may not be charged for filing a petition under this
2 subsection.

3 (4) APPOINTMENT OF COUNSEL.--Within 1 court working
4 day after the filing of a petition for involuntary outpatient
5 placement, the court shall appoint the public defender to
6 represent the person who is the subject of the petition,
7 unless the person is otherwise represented by counsel. The
8 clerk of the court shall immediately notify the public
9 defender of the appointment. The public defender shall
10 represent the person until the petition is dismissed, the
11 court order expires, or the patient is discharged from
12 involuntary outpatient placement. An attorney who represents
13 the patient shall have access to the patient, witnesses, and
14 records relevant to the presentation of the patient's case and
15 shall represent the interests of the patient, regardless of
16 the source of payment to the attorney.

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

21 (6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.--
22 (a)1. The court shall hold the hearing on involuntary
23 outpatient placement within 5 days, unless a continuance is
24 granted. The hearing shall be held in the county where the
25 patient is located, shall be as convenient to the patient as
26 is consistent with orderly procedure, and shall be conducted
27 in physical settings not likely to be injurious to the
28 patient's condition. If the court finds that the patient's
29 attendance at the hearing is not consistent with the best
30 interests of the patient and if the patient's counsel does not
31 object, the court may waive the presence of the patient from

1 all or any portion of the hearing. The state attorney for the
2 circuit in which the patient is located shall represent the
3 state, rather than the petitioner, as the real party in
4 interest in the proceeding.

5 2. The court may appoint a master to preside at the
6 hearing. One of the professionals who executed the involuntary
7 outpatient placement certificate shall be a witness. The
8 patient and the patient's guardian or representative shall be
9 informed by the court of the right to an independent expert
10 examination. If the patient cannot afford such an examination,
11 the court shall provide for one. The independent expert's
12 report shall be confidential and not discoverable, unless the
13 expert is to be called as a witness for the patient at the
14 hearing. The court shall allow testimony from individuals,
15 including family members, deemed by the court to be relevant
16 under state law, regarding the person's prior history and how
17 that prior history relates to the person's current condition.
18 The testimony in the hearing must be given under oath, and the
19 proceedings must be recorded. The patient may refuse to
20 testify at the hearing.

21 (b)1. If the court concludes that the patient meets
22 the criteria for involuntary outpatient placement pursuant to
23 subsection (1), the court shall issue an order for involuntary
24 outpatient placement. The court order shall be for a period of
25 up to 6 months. The service provider shall discharge a patient
26 from involuntary outpatient treatment any time the patient no
27 longer meets the criteria for involuntary placement.

28 2. The administrator of a receiving facility or a
29 designated department representative shall identify the
30 service provider that will have primary responsibility for
31 service provision under the order. The service provider shall

1 prepare a written proposed treatment plan and submit it before
2 the hearing for the court's consideration for inclusion in the
3 involuntary outpatient placement order. The service provider
4 shall also provide a copy of the proposed treatment plan to
5 the petitioner. The treatment plan must specify the nature and
6 extent of the patient's mental illness. The treatment plan may
7 include provisions for case management, intensive case
8 management, or assertive community treatment. The treatment
9 plan may also require that the patient make use of a service
10 provider to supply any or all of the following categories of
11 services to the individual: medication; periodic urinalysis to
12 determine compliance with treatment; individual or group
13 therapy; day or partial-day programming activities;
14 educational and vocational training or activities; alcohol or
15 substance abuse treatment and counseling and periodic tests
16 for the presence of alcohol or illegal drugs for persons with
17 a history of alcohol or substance abuse; supervision of living
18 arrangements; and any other services prescribed to treat the
19 person's mental illness and to assist the person in living and
20 functioning in the community or to attempt to prevent a
21 relapse or deterioration. Service providers may select and
22 provide supervision to other individuals, not enumerated in
23 this sub-subparagraph, to implement specific aspects of the
24 treatment plan, such as medication monitoring. The services in
25 the treatment plan must be deemed to be clinically appropriate
26 by a physician, clinical psychologist, nurse providing
27 psychiatric services consistent with chapter 464, or clinical
28 social worker who consults with, or is employed or contracted
29 by, the service provider. The service provider must certify to
30 the court in the proposed treatment plan whether sufficient
31 services for improvement and stabilization are currently

1 available and whether the service provider agrees to provide
2 those services. If the service provider certifies that the
3 services in the proposed treatment plan are not available, the
4 petitioner shall withdraw the petition. The court may not
5 order the department or the service provider to provide
6 services if the program or service is not available in the
7 patient's local community, if there is no space available in
8 the program or service for the patient, or if funding is not
9 available for the program or service. A copy of the order must
10 be sent to the Agency for Health Care Administration by the
11 service provider within 1 working day after it is received
12 from the court. After the placement order is issued, the
13 service provider and the patient may modify provisions of the
14 treatment plan. For any material modification of the treatment
15 plan to which the patient or the patient's guardian advocate,
16 if appointed, does agree, the service provider shall send
17 notice of the modification to the court. Any material
18 modifications of the treatment plan which are contested by the
19 patient or the patient's guardian advocate, if appointed,
20 shall be in writing and prepared by the service provider or
21 administrator for approval by the court.

22 3. If, in the clinical judgment of a physician, the
23 patient has failed or has refused to comply with the treatment
24 ordered by the court, and, in the clinical judgment of the
25 physician, efforts were made to solicit compliance and the
26 patient may meet the criteria for involuntary examination, a
27 person may be brought to a receiving facility pursuant to s.
28 394.463. If, after examination, the patient does not meet the
29 criteria for involuntary inpatient placement pursuant to s.
30 394.467, the patient must be discharged from the receiving
31 facility. The service provider must determine whether

1 modifications should be made to the existing treatment plan
2 and must attempt to continue to engage the patient in
3 treatment. For any material modification of the treatment plan
4 to which the patient or the patient's guardian advocate, if
5 appointed, does agree, the service provider shall send notice
6 of the modification to the court. Any material modifications
7 of the treatment plan which are contested by the patient or
8 the patient's guardian advocate, if appointed, must be
9 approved by the court.

10 (c) If, at any time before the conclusion of the
11 initial hearing on involuntary outpatient placement, it
12 appears to the court that the person does not meet the
13 criteria for involuntary outpatient placement under this
14 section but, instead, meets the criteria for involuntary
15 inpatient placement, the court may order the person admitted
16 for involuntary inpatient examination under s. 394.463. If the
17 person instead meets the criteria for involuntary assessment,
18 protective custody, or involuntary admission pursuant to s.
19 397.675, the court may order the person to be admitted for
20 involuntary assessment for a period of 5 days pursuant to s.
21 397.6811. Thereafter, all proceedings shall be governed by
22 chapter 397.

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

30 (e) The administrator of the receiving facility or the
31 designated department representative shall provide a copy of

1 the court order and adequate documentation of a patient's
2 mental illness to the service provider for involuntary
3 outpatient placement. Such documentation must include any
4 advance directives made by the patient, a psychiatric
5 evaluation of the patient, and any evaluations of the patient
6 performed by a clinical psychologist or a clinical social
7 worker.

8 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
9 PLACEMENT.--

10 (a) If the person continues to meet the criteria for
11 involuntary outpatient placement, the service provider shall,
12 before the expiration of the period during which the treatment
13 is ordered for the person, file in the circuit court a
14 continued involuntary outpatient placement certificate which
15 shall be accompanied by a statement from the person's
16 physician or clinical psychologist justifying the request, a
17 brief description of the patient's treatment during the time
18 he or she was involuntarily placed, and an individualized plan
19 of continued treatment.

20 (b) Within 1 court working day after the filing of a
21 petition for continued involuntary outpatient placement, the
22 court shall appoint the public defender to represent the
23 person who is the subject of the petition, unless the person
24 is otherwise represented by counsel. The clerk of the court
25 shall immediately notify the public defender of such
26 appointment. The public defender shall represent the person
27 until the petition is dismissed or the court order expires or
28 the patient is discharged from involuntary outpatient
29 placement. Any attorney representing the patient shall have
30 access to the patient, witnesses, and records relevant to the
31 presentation of the patient's case and shall represent the

1 interests of the patient, regardless of the source of payment
2 to the attorney.

3 (c) Hearings on petitions for continued involuntary
4 outpatient placement shall be before the circuit court. The
5 court may appoint a master to preside at the hearing. The
6 procedures for obtaining an order pursuant to this paragraph
7 shall be in accordance with subsection (6), except that the
8 time period included in paragraph (1)(e) is not applicable in
9 determining the appropriateness of additional periods of
10 involuntary outpatient placement.

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

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

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

24 Section 6. Section 394.467, Florida Statutes, is
25 amended to read:

26 394.467 Involuntary inpatient placement.--

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

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

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

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

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

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

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

20 (2) ADMISSION TO A TREATMENT FACILITY.--A patient may
21 be retained by a receiving facility or involuntarily placed in
22 a treatment facility upon the recommendation of the
23 administrator of a receiving facility where the patient has
24 been examined and after adherence to the notice and hearing
25 procedures provided in s. 394.4599. The recommendation must be
26 supported by the opinion of a psychiatrist and the second
27 opinion of a clinical psychologist or another psychiatrist,
28 both of whom have personally examined the patient within the
29 preceding 72 hours, that the criteria for involuntary
30 inpatient placement are met. However, in counties of less
31 than 50,000 population, if the administrator certifies that no

1 psychiatrist or clinical psychologist is available to provide
2 the second opinion, such second opinion may be provided by a
3 licensed physician with postgraduate training and experience
4 in diagnosis and treatment of mental and nervous disorders or
5 by a ~~psychiatric~~ nurse providing psychiatric services
6 consistent with chapter 464. Such recommendation shall be
7 entered on an involuntary inpatient placement certificate,
8 which certificate shall authorize the receiving facility to
9 retain the patient pending transfer to a treatment facility or
10 completion of a hearing.

11 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.--The
12 administrator of the facility shall file a petition for
13 involuntary inpatient placement in the court in the county
14 where the patient is located. Upon filing, the clerk of the
15 court shall provide copies to the department, the patient, the
16 patient's guardian or representative, and the state attorney
17 and public defender of the judicial circuit in which the
18 patient is located. No fee shall be charged for the filing of
19 a petition under this subsection.

20 (4) APPOINTMENT OF COUNSEL.--Within 1 court working
21 day after the filing of a petition for involuntary inpatient
22 placement, the court shall appoint the public defender to
23 represent the person who is the subject of the petition,
24 unless the person is otherwise represented by counsel. The
25 clerk of the court shall immediately notify the public
26 defender of such appointment. Any attorney representing the
27 patient shall have access to the patient, witnesses, and
28 records relevant to the presentation of the patient's case and
29 shall represent the interests of the patient, regardless of
30 the source of payment to the attorney.

31

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

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

6 (a)1. The court shall hold the hearing on involuntary
7 inpatient placement within 5 days, unless a continuance is
8 granted. The hearing shall be held in the county where the
9 patient is located and shall be as convenient to the patient
10 as may be consistent with orderly procedure and shall be
11 conducted in physical settings not likely to be injurious to
12 the patient's condition. If the court finds that the
13 patient's attendance at the hearing is not consistent with the
14 best interests of the patient, and the patient's counsel does
15 not object, the court may waive the presence of the patient
16 from all or any portion of the hearing. The state attorney
17 for the circuit in which the patient is located shall
18 represent the state, rather than the petitioning facility
19 administrator, as the real party in interest in the
20 proceeding.

21 2. The court may appoint a master to preside at the
22 hearing. One of the professionals who executed the involuntary
23 inpatient placement certificate shall be a witness. The
24 patient and the patient's guardian or representative shall be
25 informed by the court of the right to an independent expert
26 examination. If the patient cannot afford such an
27 examination, the court shall provide for one. The independent
28 expert's report shall be confidential and not discoverable,
29 unless the expert is to be called as a witness for the patient
30 at the hearing. The testimony in the hearing must be given
31

1 under oath, and the proceedings must be recorded. The patient
2 may refuse to testify at the hearing.

3 (b) If the court concludes that the patient meets the
4 criteria for involuntary inpatient placement, it shall order
5 that the patient be transferred to a treatment facility or, if
6 the patient is at a treatment facility, that the patient be
7 retained there or be treated at any other appropriate
8 receiving or treatment facility, or that the patient receive
9 services from a receiving or treatment facility, on an
10 involuntary basis, for a period of up to 6 months. The order
11 shall specify the nature and extent of the patient's mental
12 illness. The facility shall discharge a patient any time the
13 patient no longer meets the criteria for involuntary inpatient
14 placement, unless the patient has transferred to voluntary
15 status.

16 (c) If at any time prior to the conclusion of the
17 hearing on involuntary inpatient placement it appears to the
18 court that the person does not meet the criteria for
19 involuntary inpatient placement under this section, but
20 instead meets the criteria for involuntary outpatient
21 placement, the court may order the person evaluated for
22 involuntary outpatient placement pursuant to s. 394.4655. The
23 petition and hearing procedures set forth in s. 394.4655 shall
24 apply. If the person ~~placement under this chapter, but~~ instead
25 meets the criteria for involuntary assessment, protective
26 custody, or involuntary admission pursuant to s. 397.675, then
27 the court may order the person to be admitted for involuntary
28 assessment for a period of 5 days pursuant to s. 397.6811.
29 Thereafter, all proceedings shall be governed by chapter 397.

30 (d) At the hearing on involuntary inpatient placement,
31 the court shall consider testimony and evidence regarding the

1 patient's competence to consent to treatment. If the court
2 finds that the patient is incompetent to consent to treatment,
3 it shall appoint a guardian advocate as provided in s.
4 394.4598.

5 (e) The administrator of the receiving facility shall
6 provide a copy of the court order and adequate documentation
7 of a patient's mental illness to the administrator of a
8 treatment facility whenever a patient is ordered for
9 involuntary inpatient placement, whether by civil or criminal
10 court. Such documentation shall include any advance
11 directives made by the patient, a psychiatric evaluation of
12 the patient, and any evaluations of the patient performed by a
13 clinical psychologist or a clinical social worker. The
14 administrator of a treatment facility may refuse admission to
15 any patient directed to its facilities on an involuntary
16 basis, whether by civil or criminal court order, who is not
17 accompanied at the same time by adequate orders and
18 documentation.

19 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
20 PLACEMENT.--

21 (a) Hearings on petitions for continued involuntary
22 inpatient placement shall be administrative hearings and shall
23 be conducted in accordance with the provisions of s.
24 120.57(1), except that any order entered by the hearing
25 officer shall be final and subject to judicial review in
26 accordance with s. 120.68. Orders concerning patients
27 committed after successfully pleading not guilty by reason of
28 insanity shall be governed by the provisions of s. 916.15.

29 (b) If the patient continues to meet the criteria for
30 involuntary inpatient placement, the administrator shall,
31 prior to the expiration of the period during which the

1 treatment facility is authorized to retain the patient, file a
2 petition requesting authorization for continued involuntary
3 inpatient placement. The request shall be accompanied by a
4 statement from the patient's physician or clinical
5 psychologist justifying the request, a brief description of
6 the patient's treatment during the time he or she was
7 involuntarily placed, and an individualized plan of continued
8 treatment. Notice of the hearing shall be provided as set
9 forth in s. 394.4599. If at the hearing the hearing officer
10 finds that attendance at the hearing is not consistent with
11 the best interests of the patient, the hearing officer may
12 waive the presence of the patient from all or any portion of
13 the hearing, unless the patient, through counsel, objects to
14 the waiver of presence. The testimony in the hearing must be
15 under oath, and the proceedings must be recorded.

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

21 (d) If at a hearing it is shown that the patient
22 continues to meet the criteria for involuntary inpatient
23 placement, the administrative law judge shall sign the order
24 for continued involuntary inpatient placement for a period not
25 to exceed 6 months. The same procedure shall be repeated
26 prior to the expiration of each additional period the patient
27 is retained.

28 (e) If continued involuntary inpatient placement is
29 necessary for a patient admitted while serving a criminal
30 sentence, but whose sentence is about to expire, or for a
31 patient involuntarily placed while a minor but who is about to

1 reach the age of 18, the administrator shall petition the
2 administrative law judge for an order authorizing continued
3 involuntary inpatient placement.

4 (f) If the patient has been previously found
5 incompetent to consent to treatment, the hearing officer shall
6 consider testimony and evidence regarding the patient's
7 competence. If the hearing officer finds evidence that the
8 patient is now competent to consent to treatment, the hearing
9 officer may issue a recommended order to the court that found
10 the patient incompetent to consent to treatment that the
11 patient's competence be restored and that any guardian
12 advocate previously appointed be discharged.

13 (8) RETURN OF PATIENTS.--When a patient at a treatment
14 facility leaves the facility without authorization, the
15 administrator may authorize a search for the patient and the
16 return of the patient to the facility. The administrator may
17 request the assistance of a law enforcement agency in the
18 search for and return of the patient.

19 Section 7. The Department of Children and Family
20 Services shall have rulemaking authority to implement the
21 provisions of ss. 394.455, 394.4598, 394.4615, 394.463, and
22 394.467, as amended or created by this act. These rules shall
23 be for the purpose of protecting the health, safety, and
24 well-being of persons examined, treated, or placed under this
25 act.

26 Section 8. If any provision of this act or the
27 application thereof to any person or circumstance is held
28 invalid, the invalidity does not affect other provisions or
29 applications of this act which can be given effect without the
30 invalid provision or application, and to this end the
31 provisions of this act are declared severable.

1 Section 9. This act shall take effect January 1, 2005.

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3 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
4 COMMITTEE SUBSTITUTE FOR
5 CS/SB 700

6

6 - Reduces the number of days from 14 to 7 days in which a
7 voluntary mental health examination must have been
8 previously conducted for purposes of determining whether
a certificate for involuntary outpatient placement should
be executed.

9 - Allows for the release to specified persons of a person's
10 clinical record for determining when someone meets the
11 criteria for involuntary outpatient placement or for
preparing a proposed treatment plan

12 - Clarifies that the clerk of the court is required to
13 forward copies of the petition for involuntary outpatient
14 placement and the proposed treatment plan to the
department, the patient, the patient's guardian or
representative, the state attorney and the public
defender.

15 - Clarifies that a court may alternatively order someone
16 originally subject to a petition for involuntary
17 outpatient placement to be involuntarily re-examined for
involuntary inpatient placement.

18 - Allows an involuntary outpatient and the outpatient's
19 attorney to agree to a continued period of involuntary
outpatient placement without having to hold a court
hearing.

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