

By the Committee on Health Care; and Senators Rich and Campbell

587-1819-06

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A bill to be entitled

An act relating to the Florida Mental Health Act; amending s. 394.455, F.S.; providing and revising definitions; amending s. 394.463, F.S.; providing that a marriage and family therapist may execute a certificate for involuntary examination; amending s. 394.4655, F.S.; providing that a marriage and family therapist or mental health counselor may deem a services treatment plan clinically appropriate for an involuntary outpatient placement; amending s. 394.467, F.S.; requiring that documentation of any evaluation performed by a marriage and family therapist or mental health counselor be provided when a patient is ordered for involuntary inpatient placement; providing an effective date.

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

Section 1. Subsection (31) of section 394.455, Florida Statutes, is amended, and subsections (34) and (35) are added to that section, to read:

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

(31) "Service provider" means any public or private receiving facility, an entity under contract with the Department of Children and Family Services to provide mental health services, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, psychiatric nurse as defined in

1 subsection (23), or a community mental health center or clinic  
2 as defined in this part.

3 (34) "Marriage and family therapist" means a person  
4 licensed as a marriage and family therapist under chapter 491.

5 (35) "Mental health counselor" means a person licensed  
6 as a mental health counselor under chapter 491.

7 Section 2. Paragraph (a) of subsection (2) of section  
8 394.463, Florida Statutes, is amended to read:

9 394.463 Involuntary examination.--

10 (2) INVOLUNTARY EXAMINATION.--

11 (a) An involuntary examination may be initiated by any  
12 one of the following means:

13 1. A court may enter an ex parte order stating that a  
14 person appears to meet the criteria for involuntary  
15 examination, giving the findings on which that conclusion is  
16 based. The ex parte order for involuntary examination must be  
17 based on sworn testimony, written or oral. If other less  
18 restrictive means are not available, such as voluntary  
19 appearance for outpatient evaluation, a law enforcement  
20 officer, or other designated agent of the court, shall take  
21 the person into custody and deliver him or her to the nearest  
22 receiving facility for involuntary examination. The order of  
23 the court shall be made a part of the patient's clinical  
24 record. No fee shall be charged for the filing of an order  
25 under this subsection. Any receiving facility accepting the  
26 patient based on this order must send a copy of the order to  
27 the Agency for Health Care Administration on the next working  
28 day. The order shall be valid only until executed or, if not  
29 executed, for the period specified in the order itself. If no  
30 time limit is specified in the order, the order shall be valid  
31 for 7 days after the date that the order was signed.

1           2. A law enforcement officer shall take a person who  
2 appears to meet the criteria for involuntary examination into  
3 custody and deliver the person or have him or her delivered to  
4 the nearest receiving facility for examination. The officer  
5 shall execute a written report detailing the circumstances  
6 under which the person was taken into custody, and the report  
7 shall be made a part of the patient's clinical record. Any  
8 receiving facility accepting the patient based on this report  
9 must send a copy of the report to the Agency for Health Care  
10 Administration on the next working day.

11           3. A physician, clinical psychologist, psychiatric  
12 nurse, mental health counselor, marriage and family therapist,  
13 or clinical social worker may execute a certificate stating  
14 that he or she has examined a person within the preceding 48  
15 hours and finds that the person appears to meet the criteria  
16 for involuntary examination and stating the observations upon  
17 which that conclusion is based. If other less restrictive  
18 means are not available, such as voluntary appearance for  
19 outpatient evaluation, a law enforcement officer shall take  
20 the person named in the certificate into custody and deliver  
21 him or her to the nearest receiving facility for involuntary  
22 examination. The law enforcement officer shall execute a  
23 written report detailing the circumstances under which the  
24 person was taken into custody. The report and certificate  
25 shall be made a part of the patient's clinical record. Any  
26 receiving facility accepting the patient based on this  
27 certificate must send a copy of the certificate to the Agency  
28 for Health Care Administration on the next working day.

29           Section 3. Paragraphs (a) and (c) of subsection (2) of  
30 section 394.4655, Florida Statutes, are amended to read:

31           394.4655 Involuntary outpatient placement.--

1           (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

2           (a)1. A patient may be retained by a receiving  
3 facility upon the recommendation of the administrator of a  
4 receiving facility where the patient has been examined and  
5 after adherence to the notice of hearing procedures provided  
6 in s. 394.4599. The recommendation must be supported by the  
7 opinion of a psychiatrist and the second opinion of a clinical  
8 psychologist or another psychiatrist, both of whom have  
9 personally examined the patient within the preceding 72 hours,  
10 that the criteria for involuntary outpatient placement are  
11 met. However, in a county having a population of fewer than  
12 50,000, if the administrator certifies that no psychiatrist or  
13 clinical psychologist is available to provide the second  
14 opinion, the second opinion may be provided by a licensed  
15 physician who has postgraduate training and experience in  
16 diagnosis and treatment of mental and nervous disorders or by  
17 a psychiatric nurse as defined in this chapter. Such a  
18 recommendation must be entered on an involuntary outpatient  
19 placement certificate, which certificate must authorize the  
20 receiving facility to retain the patient pending completion of  
21 a hearing. The certificate shall be made a part of the  
22 patient's clinical record.

23           2. If the patient has been stabilized and no longer  
24 meets the criteria for involuntary examination pursuant to s.  
25 394.463(1), the patient must be released from the receiving  
26 facility while awaiting the hearing for involuntary outpatient  
27 placement. Prior to filing a petition for involuntary  
28 outpatient treatment, the administrator of a receiving  
29 facility or a designated department representative shall  
30 identify the service provider that will have primary  
31 responsibility for service provision under an order for

1 involuntary outpatient placement, unless the person is  
2 otherwise participating in outpatient psychiatric treatment  
3 and is not in need of public financing for that treatment, in  
4 which case the individual, if eligible, may be ordered to  
5 involuntary treatment pursuant to the existing psychiatric  
6 treatment relationship.

7           3. The service provider shall prepare a written  
8 proposed treatment plan in consultation with the patient or  
9 the patient's guardian advocate, if appointed, for the court's  
10 consideration for inclusion in the involuntary outpatient  
11 placement order. The service provider shall also provide a  
12 copy of the proposed treatment plan to the patient and the  
13 administrator of the receiving facility. The treatment plan  
14 must specify the nature and extent of the patient's mental  
15 illness. The treatment plan must address the reduction of  
16 symptoms that necessitate involuntary outpatient placement and  
17 include measurable goals and objectives for the services and  
18 treatment that are provided to treat the person's mental  
19 illness and to assist the person in living and functioning in  
20 the community or to attempt to prevent a relapse or  
21 deterioration. Service providers may select and provide  
22 supervision to other individuals to implement specific aspects  
23 of the treatment plan. The services in the treatment plan must  
24 be deemed to be clinically appropriate by a physician,  
25 clinical psychologist, psychiatric nurse, mental health  
26 counselor, marriage and family therapist, or clinical social  
27 worker, as defined in this chapter, who consults with, or is  
28 employed or contracted by, the service provider. The service  
29 provider must certify to the court in the proposed treatment  
30 plan whether sufficient services for improvement and  
31 stabilization are currently available and whether the service

1 provider agrees to provide those services. If the service  
2 provider certifies that the services in the proposed treatment  
3 plan are not available, the petitioner may not file the  
4 petition.

5 (c)1. The administrator of the treatment facility  
6 shall provide a copy of the involuntary outpatient placement  
7 certificate and a copy of the state mental health discharge  
8 form to a department representative in the county where the  
9 patient will be residing. For persons who are leaving a state  
10 mental health treatment facility, the petition for involuntary  
11 outpatient placement must be filed in the county where the  
12 patient will be residing.

13 2. The service provider that will have primary  
14 responsibility for service provision shall be identified by  
15 the designated department representative prior to the order  
16 for involuntary outpatient placement and must, prior to filing  
17 a petition for involuntary outpatient placement, certify to  
18 the court whether the services recommended in the patient's  
19 discharge plan are available in the local community and  
20 whether the service provider agrees to provide those services.  
21 The service provider must develop with the patient, or the  
22 patient's guardian advocate, if appointed, a treatment or  
23 service plan that addresses the needs identified in the  
24 discharge plan. The plan must be deemed to be clinically  
25 appropriate by a physician, clinical psychologist, psychiatric  
26 nurse, mental health counselor, marriage and family therapist,  
27 or clinical social worker, as defined in this chapter, who  
28 consults with, or is employed or contracted by, the service  
29 provider.

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1           3. If the service provider certifies that the services  
2 in the proposed treatment or service plan are not available,  
3 the petitioner may not file the petition.

4           Section 4. Paragraph (e) of subsection (6) of section  
5 394.467, Florida Statutes, is amended to read:

6           394.467 Involuntary inpatient placement.--

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

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

23           Section 5. This act shall take effect July 1, 2006.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1034

The Committee Substitute revises the definition of "service provider" in the Baker Act to include marriage and family therapists and mental health counselors; defines the term "mental health counselor" for purposes of the Baker Act; authorizes mental health counselors to determine if the services recommended in a treatment plan for an individual being considered for involuntary outpatient treatment are clinically appropriate; and requires any evaluations performed by an mental health counselor to be included in any documentation provided to a treatment facility director when an individual is ordered to involuntary inpatient placement.