

By Senator Fasano

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1 A bill to be entitled
2 An act relating to mental health; creating s.
3 394.9086, F.S.; creating the Community Mental Health
4 and Substance Abuse Treatment and Crime Reduction Act;
5 providing legislative findings and intent; providing
6 goals for the community mental health and substance
7 abuse forensic treatment system; defining terms;
8 requiring the Department of Children and Family
9 Services, in consultation with the Agency for Health
10 Care Administration, to develop and implement a
11 community mental health and substance abuse forensic
12 treatment system; providing initiatives and strategies
13 for the community forensic system; detailing the
14 services required in the community forensic system;
15 setting forth the eligibility criteria for treatment
16 in the system; requiring the department to develop a
17 continuum of services to implement the Community
18 Mental Health and Substance Abuse Treatment and Crime
19 Reduction Act; specifying the services and functions
20 the department must undertake; authorizing the
21 department and the agency to identify geographic areas
22 of the state where the community mental health and
23 substance abuse forensic treatment system will be
24 implemented; amending s. 394.655, F.S.; providing for
25 additional functions of the Criminal Justice, Mental
26 Health, and Substance Abuse Policy Council; amending
27 s. 394.656, F.S.; requiring the department and the
28 agency to cooperate with counties that receive grants
29 funding under the Criminal Justice, Mental Health, and

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30 Substance Abuse Reinvestment Grant Program; amending
31 s. 394.657, F.S.; requiring county councils to consult
32 with local government when planning or implementing
33 the Community Mental Health and Substance Abuse
34 Treatment and Crime Reduction Act; amending s.
35 394.659, F.S.; requiring the Criminal Justice, Mental
36 Health, and Substance Abuse Technical Assistance
37 Center at the Louis de la Parte Florida Mental Health
38 Institute at the University of South Florida to
39 perform certain functions with respect to implementing
40 the act; amending s. 409.906, F.S.; adding home and
41 community-based mental health services to the optional
42 Medicaid services offered by the state Medicaid
43 program; amending s. 409.912, F.S.; exempting persons
44 who have serious and persistent mental illnesses and
45 who are receiving services under the Community Mental
46 Health and Substance Abuse Crime Reduction Act from
47 MediPass and managed care plans; amending s. 916.107,
48 F.S.; specifying treatment procedures for a client
49 admitted to a state forensic mental health treatment
50 facility who lacks the capacity to make an informed
51 decision regarding mental health treatment at the time
52 of admission; amending s. 916.111, F.S.; providing for
53 forensic evaluator training for mental health experts;
54 amending s. 916.115, F.S.; requiring court-appointed
55 experts to have completed forensic evaluator training;
56 requiring the court-appointed expert to be a
57 psychiatrist or a licensed psychologist; requiring the
58 Department of Children and Family Services to maintain

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59 and annually provide the courts with a forensic
60 evaluator registry; amending s. 916.13, F.S.;
61 requiring that a defendant who is serving a sentence
62 in the custody of the Department of Corrections, who
63 is charged with a new felony or is entitled to a
64 mandatory appeal, and who has been adjudicated
65 incompetent to proceed due to mental illness be
66 retained in the physical custody of the Department of
67 Corrections; requiring the Department of Corrections
68 to administer competency training curriculum provided
69 by the Department of Children and Family Services;
70 amending s. 916.15, F.S.; requiring that a defendant
71 who is serving a sentence in the custody of the
72 Department of Corrections, who has been charged with a
73 new felony, and who has been adjudicated not guilty by
74 reason of insanity, must be retained in the physical
75 custody of the Department of Corrections for the
76 remainder of his or her sentence; requiring the
77 Department of Corrections to evaluate the defendant
78 and file a report with the committing court requesting
79 that the defendant be returned to the court's
80 jurisdiction to determine if the defendant continues
81 to meet the criteria for involuntary commitment
82 placement; amending s. 916.17, F.S.; requiring that
83 certain defendants be placed in a community
84 residential facility for competency restoration in
85 demonstration areas established under the Community
86 Mental Health and Substance Abuse Treatment and Crime
87 Reduction Act; providing exceptions; amending s.

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88 985.19, F.S.; requiring that appointed experts
89 complete the forensic evaluator training program;
90 providing an effective date.

91

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

93

94 Section 1. Section 394.9086, Florida Statutes, is created
95 to read:

96 394.9086 Community Mental Health and Substance Abuse
97 Treatment and Crime Reduction Act.—

98 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
99 that many jail inmates who have serious mental illnesses and who
100 are committed to state forensic mental health treatment
101 facilities for competency restoration could be served more
102 effectively and at less cost in community-based alternative
103 programs. The Legislature further finds that many people who
104 have serious mental illnesses and who have been discharged from
105 state forensic mental health treatment facilities could avoid
106 recidivism to the criminal justice and forensic mental health
107 systems if they received specialized treatment in the community.
108 It is therefore the intent of the Legislature to create the
109 Community Mental Health and Substance Abuse Treatment and Crime
110 Reduction Act to serve individuals who have mental illnesses or
111 co-occurring mental illnesses and substance use disorders and
112 who are involved in or at risk of entering state forensic mental
113 health treatment facilities, prisons, jails, juvenile justice
114 centers, or state civil mental health treatment facilities.

115 (2) GOALS.—The goals of the community mental health and
116 substance abuse forensic treatment system are to:

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- 117 (a) Ensure public safety;
118 (b) Ensure that services to restore forensic competency are
119 provided in the least restrictive, least costly, and most
120 effective environment;
121 (c) Provide competency-restoration services in the
122 community when appropriate, based on consideration of public
123 safety, needs of the individual, and available resources;
124 (d) Reduce admissions for competency restoration to state
125 forensic mental health treatment facilities;
126 (e) Reduce rates of arrest, incarceration, and
127 reincarceration;
128 (f) Increase outreach and services to individuals at risk
129 for involvement in the criminal justice, juvenile justice, or
130 forensic mental health systems; and
131 (g) Support collaboration among state and local
132 stakeholders, including law enforcement agencies, courts, state
133 agencies, jails, county government, service providers,
134 individuals with mental illnesses or co-occurring mental
135 illnesses and substance abuse disorders, family members,
136 advocates, and other community members.
- 137 (3) DEFINITIONS.—As used in this section, the term:
138 (a) "Agency" means the Agency for Health Care
139 Administration.
140 (b) "Best practices" means treatment services that
141 incorporate the most effective and acceptable interventions
142 available in the care and treatment of individuals who are
143 diagnosed as having a mental illness or a co-occurring mental
144 illness and substance use disorder.
145 (c) "Community forensic system" means the community mental

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146 health and substance abuse forensic treatment system, including
147 the comprehensive set of services and supports provided to
148 individuals involved in or at risk of becoming involved in the
149 criminal justice system.

150 (d) "Community residential facility" means a community-
151 based residential treatment setting licensed by the agency under
152 s. 394.875 or s. 429.075, or the department under s. 397.401.

153 (e) "Department" means the Department of Children and
154 Family Services.

155 (f) "Evidence-based practices" means interventions and
156 strategies that, based on the best available empirical research,
157 demonstrate effective and efficient outcomes in the care and
158 treatment of individuals who are diagnosed as having mental
159 illnesses or co-occurring mental illnesses and substance use
160 disorders.

161 (g) "Forensic intensive care management" means activities
162 addressing the comprehensive psychiatric, social, and support
163 needs of individuals who are diagnosed as having serious and
164 persistent mental illnesses, co-occurring disorders, or severe
165 emotional disturbances, and who are involved in the justice
166 system and receiving services under this section. Activities
167 include, but are not limited to, service planning, service
168 coordination, monitoring, and assistance with accessing federal,
169 state, and local benefits necessary to sustain a person in the
170 community.

171 (h) "Geographic area" means a county, circuit, regional, or
172 multiregional area in this state.

173 (4) SERVICE SYSTEM.—The department, in consultation with
174 the agency, shall develop and implement a community mental

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175 health and substance abuse forensic treatment system. The
 176 community forensic system must build on local community
 177 diversion and reentry initiatives and strategies that are
 178 consistent with those identified and supported under s.
 179 394.658(1).

180 (a) The community forensic system initiatives and
 181 strategies may include, but are not limited to:

- 182 1. Mental health courts;
- 183 2. Diversion programs;
- 184 3. Alternative prosecution and sentencing techniques;
- 185 4. Crisis intervention teams;
- 186 5. Specialized training for criminal justice, juvenile
 187 justice, and treatment services professionals;
- 188 6. Specialized probation officers at the state and county
 189 levels to serve individuals under correctional control in the
 190 community;
- 191 7. Collateral services such as supported, transitional, and
 192 permanent housing, and supported employment; and
- 193 8. Reentry services to create or expand mental health and
 194 co-occurring treatment and supports for affected individuals.

195 (b) The community forensic system must include a
 196 comprehensive continuum of care and services that use evidence-
 197 based and best practices to address co-occurring mental health
 198 and substance use disorders. The community forensic system must
 199 include the following minimum services and elements:

- 200 1. Competency-restoration and treatment services provided
 201 in a variety of settings from least restrictive to progressively
 202 more restrictive settings;
- 203 2. Forensic intensive care management;

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- 204 3. Supported housing;
205 4. Supported employment;
206 5. Medication management;
207 6. Trauma-specific services for treatment of the effects of
208 sexual, physical, and emotional abuse or trauma experienced by
209 individuals who have mental illnesses and are involved in the
210 criminal justice system;
211 7. Residential services to address crisis episodes and
212 short-term residential treatment;
213 8. Treatment for co-occurring mental health and substance
214 use disorders;
215 9. Outreach and education for individuals and their
216 families who are at risk of further involvement with the justice
217 system; and
218 10. Other services or supports as identified.
219 (5) ELIGIBILITY.—The department may serve individuals who
220 meet the criteria in this subsection. The department must give
221 highest priority for services under this section to:
222 (a) Adults who are adjudicated incompetent to proceed or
223 not guilty by reason of insanity under chapter 916 and ordered
224 by the court into forensic commitment, whose current most
225 serious charge is a felony of the third degree or a felony of
226 the second degree if the felony did not involve violence, and
227 who meet public safety criteria established by the court and
228 treatability criteria established by the department for
229 placement in a community setting.
230 (b) Adults who experience serious and persistent mental
231 illnesses re-entering the community from state prisons.
232 (c) Adults who have been committed to a state forensic

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233 mental health treatment facility after being adjudicated
234 incompetent to proceed or not guilty by reason of insanity, and
235 are released or are pending release to the community by the
236 court after completing competency restoration services or being
237 found to no longer meet the criteria for continued commitment
238 placement.

239 (d) Adults who experience serious and persistent mental
240 illnesses, who have a history of involvement in the justice
241 system, or who are at risk of entering or are already involved
242 with the criminal justice system.

243 (e) Children deemed incompetent to proceed under s. 985.19.

244 (6) DEPARTMENT RESPONSIBILITIES.—The department shall
245 develop a continuum of services to implement the Community
246 Mental Health and Substance Abuse Treatment and Crime Reduction
247 Act in accordance with subsection (4). The department shall:

248 (a) Define requirements for all providers in the community
249 forensic system.

250 (b) Select demonstration sites for participation, based on
251 criteria in subsection (7), which demonstrate active and
252 sustained participation in community collaborations.

253 (c) Enter into memorandums of agreement with county
254 planning councils or committees identified in s. 394.657, which
255 are included in the demonstration sites.

256 (d) Identify providers to implement the continuum of
257 services. The department shall consult with county planning
258 councils or committees in the selection process.

259 (e) Establish performance measures and reporting
260 requirements for providers participating in the community
261 forensic system. The measures shall include, at a minimum:

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262 1. The number of individuals diverted from state forensic
263 mental health treatment facilities;

264 2. The number of individuals diverted from the criminal
265 justice system;

266 3. The rates of arrest, incarceration, and reincarceration
267 for new criminal offenses;

268 4. The rates of employment; and

269 5. The annual number of days in a crisis stabilization
270 unit, detoxification facility, short-term residential treatment
271 program, state civil mental health treatment facility, or state
272 forensic mental health treatment facility.

273 (f) Monitor contracts for compliance with terms, and at
274 least annually and to the extent possible, perform joint onsite
275 monitoring with the agency and the Criminal Justice, Mental
276 Health, and Substance Abuse Technical Assistance Center,
277 established under s. 394.659, to assess performance of the
278 contract.

279 (7) IMPLEMENTATION.—In expectation of statewide
280 implementation of this section, the department in consultation
281 with the agency may identify geographic areas of the state for
282 initial implementation. All areas must be selected based on
283 findings of community readiness and the potential for affecting
284 the greatest number of individuals entering the forensic mental
285 health and criminal justice systems. Criteria for selection may
286 include:

287 (a) Community readiness to deliver the services outlined in
288 subsection (4), demonstrated by well-established community
289 collaboration plans and local partnerships as evidenced by
290 memorandums of agreement that are submitted to and approved by

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291 the department;

292 (b) A high bed-utilization rate at state forensic mental
293 health treatment facilities;

294 (c) Successful application for implementation grant funding
295 under the Criminal Justice, Mental Health, and Substance Abuse
296 Reinvestment Grant Program; and

297 (d) Other elements determined by the department in
298 consultation with the agency.

299 Section 2. Paragraph (b) of subsection (11) of section
300 394.655, Florida Statutes, is amended to read:

301 394.655 The Substance Abuse and Mental Health Corporation;
302 powers and duties; composition; evaluation and reporting
303 requirements.-

304 (11)

305 (b) The purpose of the council shall be to:

306 1. Align policy initiatives in the criminal justice,
307 juvenile justice, and mental health systems to ensure the most
308 effective use of resources and to coordinate the development of
309 legislative proposals and budget requests relating to the shared
310 needs of adults and juveniles who have a mental illness,
311 substance abuse disorder, or co-occurring mental health and
312 substance abuse disorders who are in, or at risk of entering,
313 the criminal justice system.

314 2. Provide consultation in the development of comprehensive
315 and cost-effective community-based mental health and substance
316 abuse treatment services for individuals who have mental
317 illnesses and who are receiving services in state forensic
318 mental health treatment facilities, juvenile secure residential
319 treatment centers specializing in competency training, prisons,

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320 jails, and juvenile justice centers. The council shall appoint
321 an advisory committee to review and monitor the implementation
322 of the Community Mental Health and Substance Abuse Treatment and
323 Crime Reduction Act. The advisory committee shall include at
324 least one person who has received services and one family member
325 of a person who has received services under this section.

326 Section 3. Subsection (1) of section 394.656, Florida
327 Statutes, is amended to read:

328 394.656 Criminal Justice, Mental Health, and Substance
329 Abuse Reinvestment Grant Program.—

330 (1) There is created within the Department of Children and
331 Family Services the Criminal Justice, Mental Health, and
332 Substance Abuse Reinvestment Grant Program. The purpose of the
333 program is to provide funding to counties with which they can
334 plan, implement, or expand initiatives that increase public
335 safety, avert increased spending on criminal justice, and
336 improve the accessibility and effectiveness of treatment
337 services for adults and juveniles who have a mental illness,
338 substance abuse disorder, or co-occurring mental health and
339 substance abuse disorders and who are in, or at risk of
340 entering, the criminal or juvenile justice systems. In
341 implementing the Community Mental Health and Substance Abuse
342 Treatment and Crime Reduction Act, the department and agency
343 shall work in coordination with counties that received grants
344 under the Criminal Justice, Mental Health, and Substance Abuse
345 Reinvestment Grant Program to develop local treatment and
346 service delivery infrastructures.

347 Section 4. Subsection (1) of section 394.657, Florida
348 Statutes, is amended to read:

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349 394.657 County planning councils or committees.—

350 (1) Each board of county commissioners shall designate the
351 county public safety coordinating council established under s.
352 951.26, or designate another criminal or juvenile justice mental
353 health and substance abuse council or committee, as the planning
354 council or committee. The public safety coordinating council or
355 other designated criminal or juvenile justice mental health and
356 substance abuse council or committee shall:

357 (a) Coordinate ~~in coordination~~ with the county offices of
358 planning and budget ~~to, shall~~ make a formal recommendation to
359 the board of county commissioners regarding how the Criminal
360 Justice, Mental Health, and Substance Abuse Reinvestment Grant
361 Program may best be implemented within a community. The board of
362 county commissioners may assign any entity to prepare the
363 application on behalf of the county administration for
364 submission to the corporation for review. A county may join with
365 one or more counties to form a consortium and use a regional
366 public safety coordinating council or another county-designated
367 regional criminal or juvenile justice mental health and
368 substance abuse planning council or committee for the geographic
369 area represented by the member counties.

370 (b) Consult with local governing bodies when planning or
371 implementing the Community Mental Health and Substance Abuse
372 Treatment and Crime Reduction Act.

373 Section 5. Paragraphs (g), (h), (i), and (j) are added to
374 subsection (1) of section 394.659, Florida Statutes, to read:

375 394.659 Criminal Justice, Mental Health, and Substance
376 Abuse Technical Assistance Center.—

377 (1) There is created a Criminal Justice, Mental Health, and

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378 Substance Abuse Technical Assistance Center at the Louis de la
379 Parte Florida Mental Health Institute at the University of South
380 Florida, which shall:

381 (g) In coordination with the department, develop minimum
382 competencies and proficiencies required for communities and
383 service providers.

384 (h) Identify evidence-based and best practices and deliver
385 necessary training and consultation to service providers.

386 (i) Assist the department in developing outcome measures.

387 (j) Provide an annual report to the Governor, the President
388 of the Senate, the Speaker of the House of Representatives, the
389 Chief Justice of the Supreme Court, and the State Courts
390 Administrator on the status of implementation of the Community
391 Mental Health and Substance Abuse Treatment and Crime Reduction
392 Act. For those areas that also have a grant under the subsection
393 (2), the institute shall prepare a joint report to avoid
394 duplication.

395 Section 6. Subsection (28) is added to section 409.906,
396 Florida Statutes, to read:

397 409.906 Optional Medicaid services.—Subject to specific
398 appropriations, the agency may make payments for services which
399 are optional to the state under Title XIX of the Social Security
400 Act and are furnished by Medicaid providers to recipients who
401 are determined to be eligible on the dates on which the services
402 were provided. Any optional service that is provided shall be
403 provided only when medically necessary and in accordance with
404 state and federal law. Optional services rendered by providers
405 in mobile units to Medicaid recipients may be restricted or
406 prohibited by the agency. Nothing in this section shall be

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407 construed to prevent or limit the agency from adjusting fees,
408 reimbursement rates, lengths of stay, number of visits, or
409 number of services, or making any other adjustments necessary to
410 comply with the availability of moneys and any limitations or
411 directions provided for in the General Appropriations Act or
412 chapter 216. If necessary to safeguard the state's systems of
413 providing services to elderly and disabled persons and subject
414 to the notice and review provisions of s. 216.177, the Governor
415 may direct the Agency for Health Care Administration to amend
416 the Medicaid state plan to delete the optional Medicaid service
417 known as "Intermediate Care Facilities for the Developmentally
418 Disabled." Optional services may include:

419 (28) HOME AND COMMUNITY-BASED SERVICES.-The agency,
420 contingent upon appropriation of funds for this purpose, may
421 seek federal approval through a state plan amendment to
422 implement home and community-based services under the authority
423 of and in compliance with s. 1915i of the Social Security Act
424 for services provided to individuals who have been determined by
425 an independent evaluation to have disabilities that cause them
426 to become, or put them at risk of becoming, involved with the
427 criminal justice system due to their mental illness. In
428 accordance with allowances under s. 1915i of the Social Security
429 Act, these services may be limited to a select number of
430 eligible individuals in select geographic areas, as identified
431 by the agency. Eligible individuals may have incomes up to 150
432 percent of the federal poverty level. The agency shall
433 coordinate with the department to select and define the services
434 that will be submitted in the state plan amendment and be
435 provided under this subsection. The agency may disenroll from

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436 enrollment in MediPass, or any capitated or other Medicaid
437 managed care arrangements, those individuals receiving services
438 under this subsection. Enrollment in state plan services may not
439 exceed 1,000 individuals unless additional approval is obtained
440 from the Legislature. The agency must receive approval from the
441 Legislature or Legislative Budget Commission for any funding
442 beyond that which is provided within initial implementation
443 revenues. After July 1, 2012, the agency may consider seeking
444 authority to capitate Medicaid behavioral health services under
445 this subsection.

446 Section 7. Subsection (54) is added to section 409.912,
447 Florida Statutes, to read:

448 409.912 Cost-effective purchasing of health care.—The
449 agency shall purchase goods and services for Medicaid recipients
450 in the most cost-effective manner consistent with the delivery
451 of quality medical care. To ensure that medical services are
452 effectively utilized, the agency may, in any case, require a
453 confirmation or second physician's opinion of the correct
454 diagnosis for purposes of authorizing future services under the
455 Medicaid program. This section does not restrict access to
456 emergency services or poststabilization care services as defined
457 in 42 C.F.R. part 438.114. Such confirmation or second opinion
458 shall be rendered in a manner approved by the agency. The agency
459 shall maximize the use of prepaid per capita and prepaid
460 aggregate fixed-sum basis services when appropriate and other
461 alternative service delivery and reimbursement methodologies,
462 including competitive bidding pursuant to s. 287.057, designed
463 to facilitate the cost-effective purchase of a case-managed
464 continuum of care. The agency shall also require providers to

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465 minimize the exposure of recipients to the need for acute
466 inpatient, custodial, and other institutional care and the
467 inappropriate or unnecessary use of high-cost services. The
468 agency shall contract with a vendor to monitor and evaluate the
469 clinical practice patterns of providers in order to identify
470 trends that are outside the normal practice patterns of a
471 provider's professional peers or the national guidelines of a
472 provider's professional association. The vendor must be able to
473 provide information and counseling to a provider whose practice
474 patterns are outside the norms, in consultation with the agency,
475 to improve patient care and reduce inappropriate utilization.
476 The agency may mandate prior authorization, drug therapy
477 management, or disease management participation for certain
478 populations of Medicaid beneficiaries, certain drug classes, or
479 particular drugs to prevent fraud, abuse, overuse, and possible
480 dangerous drug interactions. The Pharmaceutical and Therapeutics
481 Committee shall make recommendations to the agency on drugs for
482 which prior authorization is required. The agency shall inform
483 the Pharmaceutical and Therapeutics Committee of its decisions
484 regarding drugs subject to prior authorization. The agency is
485 authorized to limit the entities it contracts with or enrolls as
486 Medicaid providers by developing a provider network through
487 provider credentialing. The agency may competitively bid single-
488 source-provider contracts if procurement of goods or services
489 results in demonstrated cost savings to the state without
490 limiting access to care. The agency may limit its network based
491 on the assessment of beneficiary access to care, provider
492 availability, provider quality standards, time and distance
493 standards for access to care, the cultural competence of the

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494 provider network, demographic characteristics of Medicaid
495 beneficiaries, practice and provider-to-beneficiary standards,
496 appointment wait times, beneficiary use of services, provider
497 turnover, provider profiling, provider licensure history,
498 previous program integrity investigations and findings, peer
499 review, provider Medicaid policy and billing compliance records,
500 clinical and medical record audits, and other factors. Providers
501 shall not be entitled to enrollment in the Medicaid provider
502 network. The agency shall determine instances in which allowing
503 Medicaid beneficiaries to purchase durable medical equipment and
504 other goods is less expensive to the Medicaid program than long-
505 term rental of the equipment or goods. The agency may establish
506 rules to facilitate purchases in lieu of long-term rentals in
507 order to protect against fraud and abuse in the Medicaid program
508 as defined in s. 409.913. The agency may seek federal waivers
509 necessary to administer these policies.

510 (54) Persons who have serious and persistent mental
511 illnesses, who are receiving services under the Community Mental
512 Health and Substance Abuse Crime Reduction Act, and who are
513 eligible for and receiving services under the state plan
514 implemented under s. 1915i of the Social Security Act, as
515 approved by the Centers for Medicare and Medicaid Services, are
516 exempt from MediPass and managed care plans authorized under
517 this chapter, including capitated managed care plans authorized
518 under s. 409.91211.

519 Section 8. Paragraph (a) of subsection (3) of section
520 916.107, Florida Statutes, is amended to read:

521 916.107 Rights of forensic clients.—

522 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

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523 (a) A forensic client shall be asked to give express and
524 informed written consent for treatment. If a client refuses such
525 treatment as is deemed necessary and essential by the client's
526 multidisciplinary treatment team for the appropriate care of the
527 client, such treatment may be provided under the following
528 circumstances:

529 1. In an emergency situation in which there is immediate
530 danger to the safety of the client or others, such treatment may
531 be provided upon the written order of a physician for a period
532 not to exceed 48 hours, excluding weekends and legal holidays.
533 If, after the 48-hour period, the client has not given express
534 and informed consent to the treatment initially refused, the
535 administrator or designee of the civil or forensic facility
536 shall, within 48 hours, excluding weekends and legal holidays,
537 petition the committing court or the circuit court serving the
538 county in which the facility is located, at the option of the
539 facility administrator or designee, for an order authorizing the
540 continued treatment of the client. In the interim, the need for
541 treatment shall be reviewed every 48 hours and may be continued
542 without the consent of the client upon the continued written
543 order of a physician who has determined that the emergency
544 situation continues to present a danger to the safety of the
545 client or others.

546 2. In a situation other than an emergency situation, the
547 administrator or designee of the facility shall petition the
548 court for an order authorizing necessary and essential treatment
549 for the client.

550 a. If the client has been receiving psychotherapeutic
551 medication at the jail at the time of transfer to the state

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552 forensic mental health treatment facility and lacks the capacity
553 to make an informed decision regarding mental health treatment
554 at the time of admission, the admitting physician may order a
555 continuation of the psychotherapeutic medication if, in the
556 clinical judgment of the physician, abrupt cessation of the
557 psychotherapeutic medication could cause a risk to the health
558 and safety of the client during the time a court order to
559 medicate is pursued. The jail physician shall provide a current
560 psychotherapeutic medication order at the time of transfer to
561 the admitting facility.

562 b. The court order shall allow such treatment for a period
563 not to exceed 90 days following the date of the entry of the
564 order. Unless the court is notified in writing that the client
565 has provided express and informed consent in writing or that the
566 client has been discharged by the committing court, the
567 administrator or designee shall, prior to the expiration of the
568 initial 90-day order, petition the court for an order
569 authorizing the continuation of treatment for another 90-day
570 period. This procedure shall be repeated until the client
571 provides consent or is discharged by the committing court.

572 3. At the hearing on the issue of whether the court should
573 enter an order authorizing treatment for which a client was
574 unable to or refused to give express and informed consent, the
575 court shall determine by clear and convincing evidence that the
576 client has mental illness, retardation, or autism, that the
577 treatment not consented to is essential to the care of the
578 client, and that the treatment not consented to is not
579 experimental and does not present an unreasonable risk of
580 serious, hazardous, or irreversible side effects. In arriving at

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581 the substitute judgment decision, the court must consider at
582 least the following factors:

- 583 a. The client's expressed preference regarding treatment;
584 b. The probability of adverse side effects;
585 c. The prognosis without treatment; and
586 d. The prognosis with treatment.

587

588 The hearing shall be as convenient to the client as may be
589 consistent with orderly procedure and shall be conducted in
590 physical settings not likely to be injurious to the client's
591 condition. The court may appoint a general or special magistrate
592 to preside at the hearing. The client or the client's guardian,
593 and the representative, shall be provided with a copy of the
594 petition and the date, time, and location of the hearing. The
595 client has the right to have an attorney represent him or her at
596 the hearing, and, if the client is indigent, the court shall
597 appoint the office of the public defender to represent the
598 client at the hearing. The client may testify or not, as he or
599 she chooses, and has the right to cross-examine witnesses and
600 may present his or her own witnesses.

601 Section 9. Section 916.111, Florida Statutes, is amended to
602 read:

603 916.111 Training of mental health experts.—The evaluation
604 of defendants for competency to proceed or for sanity at the
605 time of the commission of the offense shall be conducted in such
606 a way as to ensure uniform application of the criteria
607 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal
608 Procedure.

609 (1) A forensic evaluator training course approved by the

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610 department must be provided at least annually to ensure that
611 mental health professionals have the opportunity to be placed on
612 the department's forensic evaluator registry.

613 (a) Beginning July 1, 2010, experts shall remain on the
614 registry if they have completed or retaken the required training
615 within the previous 5 years. Those who have not completed the
616 required training within the previous 5 years shall be removed
617 from the registry and may not conduct evaluations for the
618 courts.

619 (b) A mental health professional who has completed the
620 training course within the previous 5 years is responsible for
621 maintaining documentation of completion of the required training
622 and providing to the department current contact information.

623 (2) The department shall develop, and may contract with
624 accredited institutions:

625 (a) ~~(1)~~ To provide:

626 1. ~~(a)~~ A plan for training mental health professionals to
627 perform forensic evaluations and to standardize the criteria and
628 procedures to be used in these evaluations;

629 2. ~~(b)~~ Clinical protocols and procedures based upon the
630 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
631 Procedure; and

632 3. ~~(c)~~ Training for mental health professionals in the
633 application of these protocols and procedures in performing
634 forensic evaluations and providing reports to the courts; and

635 (b) ~~(2)~~ To compile and maintain the necessary information
636 for evaluating the success of this program, including the number
637 of persons trained, the cost of operating the program, and the
638 effect on the quality of forensic evaluations as measured by

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639 appropriateness of admissions to state forensic facilities and
640 to community-based care programs.

641 Section 10. Subsection (1) of section 916.115, Florida
642 Statutes, is amended to read:

643 916.115 Appointment of experts.—

644 (1) The court shall appoint no more than three experts to
645 determine the mental condition of a defendant in a criminal
646 case, including competency to proceed, insanity, involuntary
647 placement, and treatment. The experts may evaluate the defendant
648 in jail or in another appropriate local facility or in a
649 facility of the Department of Corrections.

650 (a) ~~To the extent possible,~~ The appointed experts shall
651 have completed forensic evaluator training as provided in s.
652 916.111 approved by the department, and each shall be a
653 psychiatrist, or licensed psychologist, ~~or physician.~~

654 (b) The department shall maintain and annually provide the
655 courts with a forensic evaluator registry ~~list~~ of available
656 mental health professionals who have completed the approved
657 training as experts.

658 Section 11. Section 916.13, Florida Statutes, is amended to
659 read:

660 916.13 Involuntary commitment of defendant adjudicated
661 incompetent.—

662 (1) Except for a defendant who is serving a sentence in the
663 custody of the Department of Corrections, a ~~Every~~ defendant who
664 is charged with a felony and who is adjudicated incompetent to
665 proceed may be involuntarily committed for treatment upon a
666 finding by the court of clear and convincing evidence that:

667 (a) The defendant has a mental illness and because of the

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668 mental illness:

669 1. The defendant is manifestly incapable of surviving alone
670 or with the help of willing and responsible family or friends,
671 including available alternative services, and, without
672 treatment, the defendant is likely to suffer from neglect or
673 refuse to care for herself or himself and such neglect or
674 refusal poses a real and present threat of substantial harm to
675 the defendant's well-being; or

676 2. There is a substantial likelihood that in the near
677 future the defendant will inflict serious bodily harm on herself
678 or himself or another person, as evidenced by recent behavior
679 causing, attempting, or threatening such harm;

680 (b) All available, less restrictive treatment alternatives,
681 including treatment in community residential facilities or
682 community inpatient or outpatient settings, which would offer an
683 opportunity for improvement of the defendant's condition have
684 been judged to be inappropriate; and

685 (c) There is a substantial probability that the mental
686 illness causing the defendant's incompetence will respond to
687 treatment and the defendant will regain competency to proceed in
688 the reasonably foreseeable future.

689 (2) (a) A defendant who has been charged with a felony and
690 who has been adjudicated incompetent to proceed due to mental
691 illness, and who meets the criteria for involuntary commitment
692 ~~to the department under the provisions of this chapter,~~ may be
693 committed to the department, and the department shall retain and
694 treat the defendant. Within ~~No later than~~ 6 months after the
695 date of admission and at the end of any period of extended
696 commitment, or at any time the administrator or designee shall

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697 have determined that the defendant has regained competency to
698 proceed or no longer meets the criteria for continued
699 commitment, the administrator or designee shall file a report
700 with the court pursuant to the applicable Florida Rules of
701 Criminal Procedure.

702 (b) A defendant who is serving a sentence in the custody of
703 the Department of Corrections, who is charged with a new felony
704 or is entitled to a mandatory appeal under Rule 3.851, Florida
705 Rules of Criminal Procedure, and who has been adjudicated
706 incompetent to proceed due to mental illness shall be retained
707 in the physical custody of the Department of Corrections. The
708 Department of Corrections shall administer competency training
709 curriculum provided by the department. Within 6 months after the
710 administration of the competency training and every 12 months
711 thereafter, or at any time the department determines that the
712 defendant has regained competency to proceed, the department
713 shall file a report with the court pursuant to the applicable
714 Florida Rules of Criminal Procedure.

715 (c) Within 15 days after the court receives notification
716 that a defendant is competent to proceed or no longer meets the
717 criteria for continued commitment, the defendant shall be
718 transported back to jail pursuant to s. 916.107(10) for the
719 purpose of holding a competency hearing

720 (d) A competency hearing shall be held within 30 days after
721 a court receives notification that the defendant is competent to
722 proceed or no longer meets criteria for continued commitment.

723 Section 12. Present subsection (4) of section 916.15,
724 Florida Statutes, is renumbered as subsection (6), and new
725 subsections (4) and (5) are added to that section, to read:

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726 916.15 Involuntary commitment of defendant adjudicated not
727 guilty by reason of insanity.—

728 (4) (a) Within 15 days after the court is notified that a
729 defendant no longer meets the criteria for involuntary
730 commitment placement, the defendant shall be transported back to
731 jail for the purpose of holding a commitment hearing.

732 (b) The commitment hearing must be held within 30 days
733 after the court receives notification that the defendant no
734 longer meets the criteria for continued commitment placement.

735 (5) A defendant who is serving a sentence in the custody of
736 the Department of Corrections, who has been charged with a new
737 felony, and who has been adjudicated not guilty by reason of
738 insanity shall be retained in the physical custody of the
739 Department of Corrections for the remainder of his or her
740 sentence. Within 30 days before the defendant's release date,
741 the department shall evaluate the defendant and file a report
742 with the court requesting that the defendant be returned to the
743 court's jurisdiction to determine if the defendant continues to
744 meet the criteria for involuntary commitment placement.

745 Section 13. Present subsections (2) and (3) of section
746 916.17, Florida Statutes, are renumbered as subsections (3) and
747 (4), respectively, and a new subsection (2) is added to that
748 section, to read:

749 916.17 Conditional release.—

750 (2) A defendant who otherwise meets the criteria for
751 involuntary commitment under s. 916.13, but whose current most
752 serious charge is a felony of the third degree or a felony of
753 the second degree when the felony did not involve violence, must
754 be placed in a community residential facility for competency

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755 restoration in demonstration areas established in s. 394.9086,
756 unless bed space or funding is unavailable for the community
757 placement, or the trial court makes an explicit finding that the
758 defendant cannot be safely managed in such a placement. In
759 making the determination under this subsection, the court shall
760 consider all of the following:

761 (a) The nature and seriousness of the crime allegedly
762 committed.

763 (b) The individual's criminal history.

764 (c) The individual's psychiatric history.

765 (d) The individual's history of violent behavior or threats
766 of violent behavior, and risk of harm to self or others.

767 (e) The likelihood that the individual will comply with and
768 benefit from the mental health treatment and services being
769 recommended.

770 (f) The availability of appropriate community-based
771 services and treatment settings.

772 (g) Other information considered relevant by the court.

773 Section 14. Paragraphs (b) and (d) of subsection (1) of
774 section 985.19, Florida Statutes, are amended to read:

775 985.19 Incompetency in juvenile delinquency cases.—

776 (1) If, at any time prior to or during a delinquency case,
777 the court has reason to believe that the child named in the
778 petition may be incompetent to proceed with the hearing, the
779 court on its own motion may, or on the motion of the child's
780 attorney or state attorney must, stay all proceedings and order
781 an evaluation of the child's mental condition.

782 (b) All determinations of competency shall be made at a
783 hearing, with findings of fact based on an evaluation of the

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784 child's mental condition made by not less than two nor more than
785 three experts appointed by the court. The basis for the
786 determination of incompetency must be specifically stated in the
787 evaluation and must be conducted in such a way as to ensure
788 uniform application of the criteria enumerated in Rule 8.095,
789 Florida Rules of Juvenile Procedure. In addition, a
790 recommendation as to whether residential or nonresidential
791 treatment or training is required must be included in the
792 evaluation. Experts appointed by the court to determine the
793 mental condition of a child shall be allowed reasonable fees for
794 services rendered. State employees may be paid expenses pursuant
795 to s. 112.061. The fees shall be taxed as costs in the case.

796 (d) Appointed experts must have completed forensic
797 evaluator training approved by the department within 5 years
798 prior to conducting evaluations for the court, and each must be
799 a psychiatrist, licensed psychologist, or physician. For
800 incompetency evaluations related to mental illness, the
801 Department of Children and Family Services shall maintain and
802 annually provide the courts with a list of available mental
803 health professionals who have completed a training program
804 approved by the Department of Children and Family Services to
805 perform the evaluations. Beginning July 1, 2010, experts shall
806 remain on the department's registry as long as they have
807 completed or retaken the forensic evaluator training within the
808 previous 5 years. Those who have not completed the required
809 training within the previous 5 years shall be removed from the
810 department's registry and may not conduct evaluations for the
811 courts. Experts are responsible for maintaining documentation of
812 completion of the required training and providing the department

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813 with current contact information during the 5-year period that
814 the required training remains in effect.

815 Section 15. This act shall take effect July 1, 2009.