



200818

LEGISLATIVE ACTION

Senate

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House

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The Committee on Children, Families, and Elder Affairs (Braynon) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 22 - 357

and insert:

(2) "Clinical psychologist" means a psychologist as defined in s. 490.003(7) with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs



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10 that qualifies as a receiving or treatment facility under this  
11 part.

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

17 (4) "Clinical social worker" means a person licensed as a  
18 clinical social worker under chapter 491.

19 (5) "Community facility" means any community service  
20 provider contracting with the department to furnish substance  
21 abuse or mental health services under part IV of this chapter.

22 (6) "Community mental health center or clinic" means a  
23 publicly funded, not-for-profit center which contracts with the  
24 department for the provision of inpatient, outpatient, day  
25 treatment, or emergency services.

26 (7) "Court," unless otherwise specified, means the circuit  
27 court.

28 (8) "Department" means the Department of Children and  
29 Families ~~Family Services~~.

30 (10) ~~(9)~~ "Express and informed consent" means consent  
31 voluntarily given in writing, by a competent person, after  
32 sufficient explanation and disclosure of the subject matter  
33 involved to enable the person to make a knowing and willful  
34 decision without any element of force, fraud, deceit, duress, or  
35 other form of constraint or coercion.

36 (11) ~~(10)~~ "Facility" means any hospital, community facility,  
37 public or private facility, or receiving or treatment facility  
38 providing for the evaluation, diagnosis, care, treatment,



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39 training, or hospitalization of persons who appear to have a  
40 mental illness or have been diagnosed as having a mental  
41 illness. The term "Facility" does not include any program or  
42 entity licensed pursuant to chapter 400 or chapter 429.

43 (12)-(11) "Guardian" means the natural guardian of a minor,  
44 or a person appointed by a court to act on behalf of a ward's  
45 person if the ward is a minor or has been adjudicated  
46 incapacitated.

47 (13)-(12) "Guardian advocate" means a person appointed by a  
48 court to make decisions regarding mental health treatment on  
49 behalf of a patient who has been found incompetent to consent to  
50 treatment pursuant to this part. The guardian advocate may be  
51 granted specific additional powers by written order of the  
52 court, as provided in this part.

53 (14)-(13) "Hospital" means a facility as defined in s.  
54 395.002 and licensed under chapter 395 and part II of chapter  
55 408.

56 (15)-(14) "Incapacitated" means that a person has been  
57 adjudicated incapacitated pursuant to part V of chapter 744 and  
58 a guardian of the person has been appointed.

59 (16)-(15) "Incompetent to consent to treatment" means that a  
60 person's judgment is so affected by his or her mental illness  
61 that the person lacks the capacity to make a well-reasoned,  
62 willful, and knowing decision concerning his or her medical or  
63 mental health treatment.

64 (19)-(16) "Law enforcement officer" means a law enforcement  
65 officer as defined in s. 943.10.

66 (22)-(17) "Mental health overlay program" means a mobile  
67 service which provides an independent examination for voluntary



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68 admissions and a range of supplemental onsite services to  
69 persons with a mental illness in a residential setting such as a  
70 nursing home, assisted living facility, adult family-care home,  
71 or nonresidential setting such as an adult day care center.  
72 Independent examinations provided pursuant to this part through  
73 a mental health overlay program must only be provided under  
74 contract with the department for this service or be attached to  
75 a public receiving facility that is also a community mental  
76 health center.

77 (23)~~(18)~~ "Mental illness" means an impairment of the mental  
78 or emotional processes that exercise conscious control of one's  
79 actions or of the ability to perceive or understand reality,  
80 which impairment substantially interferes with the person's  
81 ability to meet the ordinary demands of living. For the purposes  
82 of this part, the term does not include a developmental  
83 disability as defined in chapter 393, intoxication, or  
84 conditions manifested only by antisocial behavior or substance  
85 abuse impairment.

86 (24)~~(19)~~ "Mobile crisis response service" means a  
87 nonresidential crisis service attached to a public receiving  
88 facility and available 24 hours a day, 7 days a week, through  
89 which immediate intensive assessments and interventions,  
90 including screening for admission into a receiving facility,  
91 take place for the purpose of identifying appropriate treatment  
92 services.

93 (25)~~(20)~~ "Patient" means any person who is held or accepted  
94 for mental health treatment.

95 (26)~~(21)~~ "Physician" means a medical practitioner licensed  
96 under chapter 458 or chapter 459 who has experience in the



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97 diagnosis and treatment of mental and nervous disorders or a  
98 physician employed by a facility operated by the United States  
99 Department of Veterans Affairs which qualifies as a receiving or  
100 treatment facility under this part.

101 (27) "Physician assistant" means a physician assistant  
102 licensed under chapter 458 or chapter 459 who has experience  
103 regarding the diagnosis and treatment of mental and nervous  
104 disorders and such tasks as are within the supervising  
105 physician's scope of practice.

106 (28)~~(22)~~ "Private facility" means any hospital or facility  
107 operated by a for-profit or not-for-profit corporation or  
108 association that provides mental health services and is not a  
109 public facility.

110 (29)~~(23)~~ "Psychiatric nurse" means a registered nurse  
111 licensed under part I of chapter 464 who has a master's degree  
112 or a doctorate in psychiatric nursing and 2 years of post-  
113 master's clinical experience under the supervision of a  
114 physician.

115 (30)~~(24)~~ "Psychiatrist" means a medical practitioner  
116 licensed under chapter 458 or chapter 459 who has primarily  
117 diagnosed and treated mental and nervous disorders for a period  
118 of not less than 3 years, inclusive of psychiatric residency.

119 (31)~~(25)~~ "Public facility" means any facility that has  
120 contracted with the department to provide mental health services  
121 to all persons, regardless of their ability to pay, and is  
122 receiving state funds for such purpose.

123 (32)~~(26)~~ "Receiving facility" means any public or private  
124 facility designated by the department to receive and hold  
125 involuntary patients under emergency conditions or for



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126 psychiatric evaluation and to provide short-term treatment. The  
127 term does not include a county jail.

128 ~~(33)~~~~(27)~~ "Representative" means a person selected to  
129 receive notice of proceedings during the time a patient is held  
130 in or admitted to a receiving or treatment facility.

131 ~~(34)~~~~(28)~~ (a) "Restraint" means a physical device, method, or  
132 drug used to control behavior. A physical restraint is any  
133 manual method or physical or mechanical device, material, or  
134 equipment attached or adjacent to the individual's body so that  
135 he or she cannot easily remove the restraint and which restricts  
136 freedom of movement or normal access to one's body.

137 (b) A drug used as a restraint is a medication used to  
138 control the person's behavior or to restrict his or her freedom  
139 of movement and is not part of the standard treatment regimen of  
140 a person with a diagnosed mental illness who is a client of the  
141 department. Physically holding a person during a procedure to  
142 forcibly administer psychotropic medication is a physical  
143 restraint.

144 (c) Restraint does not include physical devices, such as  
145 orthopedically prescribed appliances, surgical dressings and  
146 bandages, supportive body bands, or other physical holding when  
147 necessary for routine physical examinations and tests; or for  
148 purposes of orthopedic, surgical, or other similar medical  
149 treatment; when used to provide support for the achievement of  
150 functional body position or proper balance; or when used to  
151 protect a person from falling out of bed.

152 ~~(35)~~~~(29)~~ "Seclusion" means the physical segregation of a  
153 person in any fashion or involuntary isolation of a person in a  
154 room or area from which the person is prevented from leaving.



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155 The prevention may be by physical barrier or by a staff member  
156 who is acting in a manner, or who is physically situated, so as  
157 to prevent the person from leaving the room or area. For  
158 purposes of this chapter, the term does not mean isolation due  
159 to a person's medical condition or symptoms.

160 (36)~~(30)~~ "Secretary" means the Secretary of Children and  
161 Families ~~Family Services~~.

162 (38)~~(31)~~ "Transfer evaluation" means the process, as  
163 approved by the appropriate district office of the department,  
164 whereby a person who is being considered for placement in a  
165 state treatment facility is first evaluated for appropriateness  
166 of admission to the facility by a community-based public  
167 receiving facility or by a community mental health center or  
168 clinic if the public receiving facility is not a community  
169 mental health center or clinic.

170 (39)~~(32)~~ "Treatment facility" means any state-owned, state-  
171 operated, or state-supported hospital, center, or clinic  
172 designated by the department for extended treatment and  
173 hospitalization, beyond that provided for by a receiving  
174 facility, of persons who have a mental illness, including  
175 facilities of the United States Government, and any private  
176 facility designated by the department when rendering such  
177 services to a person pursuant to the provisions of this part.  
178 Patients treated in facilities of the United States Government  
179 shall be solely those whose care is the responsibility of the  
180 United States Department of Veterans Affairs.

181 (37)~~(33)~~ "Service provider" means any public or private  
182 receiving facility, an entity under contract with the Department  
183 of Children and Families ~~Family Services~~ to provide mental



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184 health services, a clinical psychologist, a clinical social  
185 worker, a marriage and family therapist, a mental health  
186 counselor, a physician, a psychiatric nurse as defined in  
187 subsection (29) ~~(23)~~, or a community mental health center or  
188 clinic as defined in this part.

189 (17) ~~(34)~~ "Involuntary examination" means an examination  
190 performed under s. 394.463 to determine if an individual  
191 qualifies for involuntary inpatient treatment under s.  
192 394.467(1) or involuntary outpatient treatment under s.  
193 394.4655(1).

194 (18) ~~(35)~~ "Involuntary placement" means either involuntary  
195 outpatient treatment pursuant to s. 394.4655 or involuntary  
196 inpatient treatment pursuant to s. 394.467.

197 (20) ~~(36)~~ "Marriage and family therapist" means a person  
198 licensed as a marriage and family therapist under chapter 491.

199 (21) ~~(37)~~ "Mental health counselor" means a person licensed  
200 as a mental health counselor under chapter 491.

201 (9) ~~(38)~~ "Electronic means" means a form of  
202 telecommunication that requires all parties to maintain visual  
203 as well as audio communication.

204 Section 2. Paragraph (a) of subsection (2) of section  
205 394.463, Florida Statutes, is amended to read:

206 394.463 Involuntary examination.—

207 (2) INVOLUNTARY EXAMINATION.—

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

210 1. A court may enter an ex parte order stating that a  
211 person appears to meet the criteria for involuntary examination,  
212 giving the findings on which that conclusion is based. The ex





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213 parte order for involuntary examination must be based on sworn  
214 testimony, written or oral. If other less restrictive means are  
215 not available, such as voluntary appearance for outpatient  
216 evaluation, a law enforcement officer, or other designated agent  
217 of the court, shall take the person into custody and deliver him  
218 or her to the nearest receiving facility for involuntary  
219 examination. The order of the court shall be made a part of the  
220 patient's clinical record. No fee shall be charged for the  
221 filing of an order under this subsection. Any receiving facility  
222 accepting the patient based on this order must send a copy of  
223 the order to the Agency for Health Care Administration on the  
224 next working day. The order shall be valid only until executed  
225 or, if not executed, for the period specified in the order  
226 itself. If no time limit is specified in the order, the order  
227 shall be valid for 7 days after the date that the order was  
228 signed.

229         2. A law enforcement officer shall take a person who  
230 appears to meet the criteria for involuntary examination into  
231 custody and deliver the person or have him or her delivered to  
232 the nearest receiving facility for examination. The officer  
233 shall execute a written report detailing the circumstances under  
234 which the person was taken into custody, and the report shall be  
235 made a part of the patient's clinical record. Any receiving  
236 facility accepting the patient based on this report must send a  
237 copy of the report to the Agency for Health Care Administration  
238 on the next working day.

239         3. A physician, physician assistant, clinical psychologist,  
240 psychiatric nurse, mental health counselor, marriage and family  
241 therapist, or clinical social worker may execute a certificate



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242 stating that he or she has examined a person within the  
243 preceding 48 hours and finds that the person appears to meet the  
244 criteria for involuntary examination and stating the  
245 observations upon which that conclusion is based. If other less  
246 restrictive means are not available, such as voluntary  
247 appearance for outpatient evaluation, a law enforcement officer  
248 shall take the person named in the certificate into custody and  
249 deliver him or her to the nearest receiving facility for  
250 involuntary examination. The law enforcement officer shall  
251 execute a written report detailing the circumstances under which  
252 the person was taken into custody. The report and certificate  
253 shall be made a part of the patient's clinical record. Any  
254 receiving facility accepting the patient based on this  
255 certificate must send a copy of the certificate to the Agency  
256 for Health Care Administration on the next working day.

257 Section 3. Paragraph (a) of subsection (3) of section  
258 39.407, Florida Statutes, is amended to read:

259 39.407 Medical, psychiatric, and psychological examination  
260 and treatment of child; physical, mental, or substance abuse  
261 examination of person with or requesting child custody.—

262 (3) (a) 1. Except as otherwise provided in subparagraph (b) 1.  
263 or paragraph (e), before the department provides psychotropic  
264 medications to a child in its custody, the prescribing physician  
265 shall attempt to obtain express and informed consent, as defined  
266 in s. 394.455 ~~(9)~~ and as described in s. 394.459 (3) (a), from the  
267 child's parent or legal guardian. The department must take steps  
268 necessary to facilitate the inclusion of the parent in the  
269 child's consultation with the physician. However, if the  
270 parental rights of the parent have been terminated, the parent's



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271 location or identity is unknown or cannot reasonably be  
272 ascertained, or the parent declines to give express and informed  
273 consent, the department may, after consultation with the  
274 prescribing physician, seek court authorization to provide the  
275 psychotropic medications to the child. Unless parental rights  
276 have been terminated and if it is possible to do so, the  
277 department shall continue to involve the parent in the  
278 decisionmaking process regarding the provision of psychotropic  
279 medications. If, at any time, a parent whose parental rights  
280 have not been terminated provides express and informed consent  
281 to the provision of a psychotropic medication, the requirements  
282 of this section that the department seek court authorization do  
283 not apply to that medication until such time as the parent no  
284 longer consents.

285       2. Any time the department seeks a medical evaluation to  
286 determine the need to initiate or continue a psychotropic  
287 medication for a child, the department must provide to the  
288 evaluating physician all pertinent medical information known to  
289 the department concerning that child.

290       Section 4. Paragraphs (a) and (c) of subsection (3) of  
291 section 394.495, Florida Statutes, are amended to read:

292       394.495 Child and adolescent mental health system of care;  
293 programs and services.—

294       (3) Assessments must be performed by:

295       (a) A professional as defined in s. 394.455(2), (4), (26),  
296 (29), or (30) ~~(21), (23), or (24)~~;

297       (c) A person who is under the direct supervision of a  
298 professional as defined in s. 394.455(2), (4), (26), (29), or  
299 (30) ~~(21), (23), or (24)~~ or a professional licensed under



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300 chapter 491.

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302 The department shall adopt by rule statewide standards for  
303 mental health assessments, which must be based on current  
304 relevant professional and accreditation standards.

305 Section 5. Subsection (6) of section 394.496, Florida  
306 Statutes, is amended to read:

307 394.496 Service planning.—

308 (6) A professional as defined in s. 394.455(2), (4), (26),  
309 (29), or (30) ~~(21), (23), or (24)~~ or a professional licensed  
310 under chapter 491 must be included among those persons  
311 developing the services plan.

312 Section 6. Subsection (6) of section 394.9085, Florida  
313 Statutes, is amended to read:

314 394.9085 Behavioral provider liability.—

315 (6) For purposes of this section, the terms "receiving  
316 facility," "addictions receiving facility," and "detoxification  
317 services," ~~"addictions receiving facility," and "receiving~~  
318 ~~facility"~~ have the same meanings as ~~those~~ provided in ss.  
319 394.455(32), 397.311(18)(a)1., and 397.311(18)(a)4.,  
320 ~~397.311(18)(a)1., and 394.455(26),~~ respectively.

321 Section 7. Paragraph (b) of subsection (2) of section  
322 409.972, Florida Statutes, is amended to read:

323 409.972 Mandatory and voluntary enrollment.—

324 (2) The following Medicaid-eligible persons are exempt from  
325 mandatory managed care enrollment required by s. 409.965, and  
326 may voluntarily choose to participate in the managed medical  
327 assistance program:

328 (b) Medicaid recipients residing in residential commitment



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329 facilities operated through the Department of Juvenile Justice  
330 or mental health treatment facilities as defined in s.  
331 394.455(39) ~~by s. 394.455(32)~~.

332 Section 8. Subsection (7) of section 744.704, Florida  
333 Statutes, is amended to read:

334 744.704 Powers and duties.—

335 (7) A public guardian shall not commit a ward to a mental  
336 health treatment facility, as defined in ~~s.~~ 394.455(39)

337

338 ===== T I T L E A M E N D M E N T =====

339 And the title is amended as follows:

340 Delete lines 6 - 7

341 and insert:

342 394.463, F.S.; authorizing physician assistants to  
343 initiate