

By Senator Braynon

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1 A bill to be entitled
2 An act relating to involuntary examinations under the
3 Baker Act; reordering and amending s. 394.455, F.S.;
4 providing definitions; updating references to the
5 Department of Children and Families; amending s.
6 394.463, F.S.; authorizing physician assistants and
7 advanced registered nurse practitioners to initiate
8 involuntary examinations under the Baker Act of
9 persons believed to have mental illness; amending ss.
10 39.407, 394.495, 394.496, 394.9085, 409.972, and
11 744.704, F.S.; conforming cross-references; providing
12 an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Section 394.455, Florida Statutes, is reordered
17 and amended to read:

18 394.455 Definitions.—As used in this part, ~~unless the~~
19 ~~context clearly requires otherwise,~~ the term:

20 (1) "Administrator" means the chief administrative officer
21 of a receiving or treatment facility or his or her designee.

22 (2) "Advanced registered nurse practitioner" means a
23 practitioner licensed under part I of chapter 464 who is
24 authorized to perform the functions listed in s. 464.012(4)(c).

25 (3)~~(2)~~ "Clinical psychologist" means a psychologist as
26 defined in s. 490.003(7) with 3 years of postdoctoral experience
27 in the practice of clinical psychology, inclusive of the
28 experience required for licensure, or a psychologist employed by
29 a facility operated by the United States Department of Veterans

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30 Affairs that qualifies as a receiving or treatment facility
31 under this part.

32 (4)~~(3)~~ "Clinical record" means all parts of the record
33 required to be maintained and includes all medical records,
34 progress notes, charts, and admission and discharge data, and
35 all other information recorded by a facility which pertains to
36 the patient's hospitalization or treatment.

37 (5)~~(4)~~ "Clinical social worker" means a person licensed as
38 a clinical social worker under chapter 491.

39 (6)~~(5)~~ "Community facility" means any community service
40 provider contracting with the department to furnish substance
41 abuse or mental health services under part IV of this chapter.

42 (7)~~(6)~~ "Community mental health center or clinic" means a
43 publicly funded, not-for-profit center which contracts with the
44 department for the provision of inpatient, outpatient, day
45 treatment, or emergency services.

46 (8)~~(7)~~ "Court," unless otherwise specified, means the
47 circuit court.

48 (9)~~(8)~~ "Department" means the Department of Children and
49 Families ~~Family Services~~.

50 (11)~~(9)~~ "Express and informed consent" means consent
51 voluntarily given in writing, by a competent person, after
52 sufficient explanation and disclosure of the subject matter
53 involved to enable the person to make a knowing and willful
54 decision without any element of force, fraud, deceit, duress, or
55 other form of constraint or coercion.

56 (12)~~(10)~~ "Facility" means any hospital, community facility,
57 public or private facility, or receiving or treatment facility
58 providing for the evaluation, diagnosis, care, treatment,

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

63 (13)~~(11)~~ "Guardian" means the natural guardian of a minor,
64 or a person appointed by a court to act on behalf of a ward's
65 person if the ward is a minor or has been adjudicated
66 incapacitated.

67 (14)~~(12)~~ "Guardian advocate" means a person appointed by a
68 court to make decisions regarding mental health treatment on
69 behalf of a patient who has been found incompetent to consent to
70 treatment pursuant to this part. The guardian advocate may be
71 granted specific additional powers by written order of the
72 court, as provided in this part.

73 (15)~~(13)~~ "Hospital" means a facility as defined in s.
74 395.002 and licensed under chapter 395 and part II of chapter
75 408.

76 (16)~~(14)~~ "Incapacitated" means that a person has been
77 adjudicated incapacitated pursuant to part V of chapter 744 and
78 a guardian of the person has been appointed.

79 (17)~~(15)~~ "Incompetent to consent to treatment" means that a
80 person's judgment is so affected by his or her mental illness
81 that the person lacks the capacity to make a well-reasoned,
82 willful, and knowing decision concerning his or her medical or
83 mental health treatment.

84 (20)~~(16)~~ "Law enforcement officer" means a law enforcement
85 officer as defined in s. 943.10.

86 (23)~~(17)~~ "Mental health overlay program" means a mobile
87 service which provides an independent examination for voluntary

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88 admissions and a range of supplemental onsite services to
89 persons with a mental illness in a residential setting such as a
90 nursing home, assisted living facility, adult family-care home,
91 or nonresidential setting such as an adult day care center.
92 Independent examinations provided pursuant to this part through
93 a mental health overlay program must only be provided under
94 contract with the department for this service or be attached to
95 a public receiving facility that is also a community mental
96 health center.

97 (24)~~(18)~~ "Mental illness" means an impairment of the mental
98 or emotional processes that exercise conscious control of one's
99 actions or of the ability to perceive or understand reality,
100 which impairment substantially interferes with the person's
101 ability to meet the ordinary demands of living. For the purposes
102 of this part, the term does not include a developmental
103 disability as defined in chapter 393, intoxication, or
104 conditions manifested only by antisocial behavior or substance
105 abuse impairment.

106 (25)~~(19)~~ "Mobile crisis response service" means a
107 nonresidential crisis service attached to a public receiving
108 facility and available 24 hours a day, 7 days a week, through
109 which immediate intensive assessments and interventions,
110 including screening for admission into a receiving facility,
111 take place for the purpose of identifying appropriate treatment
112 services.

113 (26)~~(20)~~ "Patient" means any person who is held or accepted
114 for mental health treatment.

115 (27)~~(21)~~ "Physician" means a medical practitioner licensed
116 under chapter 458 or chapter 459 who has experience in the

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117 diagnosis and treatment of mental and nervous disorders or a
118 physician employed by a facility operated by the United States
119 Department of Veterans Affairs which qualifies as a receiving or
120 treatment facility under this part.

121 (28) "Physician assistant" means a physician assistant
122 licensed under chapter 458 or chapter 459 who has experience
123 regarding the diagnosis and treatment of mental and nervous
124 disorders and such tasks as are within the supervising
125 physician's scope of practice.

126 (29)~~(22)~~ "Private facility" means any hospital or facility
127 operated by a for-profit or not-for-profit corporation or
128 association that provides mental health services and is not a
129 public facility.

130 (30)~~(23)~~ "Psychiatric nurse" means a registered nurse
131 licensed under part I of chapter 464 who has a master's degree
132 or a doctorate in psychiatric nursing and 2 years of post-
133 master's clinical experience under the supervision of a
134 physician.

135 (31)~~(24)~~ "Psychiatrist" means a medical practitioner
136 licensed under chapter 458 or chapter 459 who has primarily
137 diagnosed and treated mental and nervous disorders for a period
138 of not less than 3 years, inclusive of psychiatric residency.

139 (32)~~(25)~~ "Public facility" means any facility that has
140 contracted with the department to provide mental health services
141 to all persons, regardless of their ability to pay, and is
142 receiving state funds for such purpose.

143 (33)~~(26)~~ "Receiving facility" means any public or private
144 facility designated by the department to receive and hold
145 involuntary patients under emergency conditions or for

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

148 (34)~~(27)~~ "Representative" means a person selected to
149 receive notice of proceedings during the time a patient is held
150 in or admitted to a receiving or treatment facility.

151 (35)~~(28)~~ (a) "Restraint" means a physical device, method, or
152 drug used to control behavior. A physical restraint is any
153 manual method or physical or mechanical device, material, or
154 equipment attached or adjacent to the individual's body so that
155 he or she cannot easily remove the restraint and which restricts
156 freedom of movement or normal access to one's body.

157 (b) A drug used as a restraint is a medication used to
158 control the person's behavior or to restrict his or her freedom
159 of movement and is not part of the standard treatment regimen of
160 a person with a diagnosed mental illness who is a client of the
161 department. Physically holding a person during a procedure to
162 forcibly administer psychotropic medication is a physical
163 restraint.

164 (c) Restraint does not include physical devices, such as
165 orthopedically prescribed appliances, surgical dressings and
166 bandages, supportive body bands, or other physical holding when
167 necessary for routine physical examinations and tests; or for
168 purposes of orthopedic, surgical, or other similar medical
169 treatment; when used to provide support for the achievement of
170 functional body position or proper balance; or when used to
171 protect a person from falling out of bed.

172 (36)~~(29)~~ "Seclusion" means the physical segregation of a
173 person in any fashion or involuntary isolation of a person in a
174 room or area from which the person is prevented from leaving.

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

180 (37)~~(30)~~ "Secretary" means the Secretary of Children and
181 Families ~~Family Services~~.

182 (39)~~(31)~~ "Transfer evaluation" means the process, as
183 approved by the appropriate district office of the department,
184 whereby a person who is being considered for placement in a
185 state treatment facility is first evaluated for appropriateness
186 of admission to the facility by a community-based public
187 receiving facility or by a community mental health center or
188 clinic if the public receiving facility is not a community
189 mental health center or clinic.

190 (40)~~(32)~~ "Treatment facility" means any state-owned, state-
191 operated, or state-supported hospital, center, or clinic
192 designated by the department for extended treatment and
193 hospitalization, beyond that provided for by a receiving
194 facility, of persons who have a mental illness, including
195 facilities of the United States Government, and any private
196 facility designated by the department when rendering such
197 services to a person pursuant to the provisions of this part.
198 Patients treated in facilities of the United States Government
199 shall be solely those whose care is the responsibility of the
200 United States Department of Veterans Affairs.

201 (38)~~(33)~~ "Service provider" means any public or private
202 receiving facility, an entity under contract with the Department
203 of Children and Families ~~Family Services~~ to provide mental

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204 health services, a clinical psychologist, a clinical social
 205 worker, a marriage and family therapist, a mental health
 206 counselor, a physician, a psychiatric nurse as defined in
 207 subsection (30) ~~(23)~~, or a community mental health center or
 208 clinic as defined in this part.

209 (18) ~~(34)~~ "Involuntary examination" means an examination
 210 performed under s. 394.463 to determine if an individual
 211 qualifies for involuntary inpatient treatment under s.
 212 394.467(1) or involuntary outpatient treatment under s.
 213 394.4655(1).

214 (19) ~~(35)~~ "Involuntary placement" means either involuntary
 215 outpatient treatment pursuant to s. 394.4655 or involuntary
 216 inpatient treatment pursuant to s. 394.467.

217 (21) ~~(36)~~ "Marriage and family therapist" means a person
 218 licensed as a marriage and family therapist under chapter 491.

219 (22) ~~(37)~~ "Mental health counselor" means a person licensed
 220 as a mental health counselor under chapter 491.

221 (10) ~~(38)~~ "Electronic means" means a form of
 222 telecommunication that requires all parties to maintain visual
 223 as well as audio communication.

224 Section 2. Paragraph (a) of subsection (2) of section
 225 394.463, Florida Statutes, is amended to read:

226 394.463 Involuntary examination.—

227 (2) INVOLUNTARY EXAMINATION.—

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

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

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233 parte order for involuntary examination must be based on sworn
234 testimony, written or oral. If other less restrictive means are
235 not available, such as voluntary appearance for outpatient
236 evaluation, a law enforcement officer, or other designated agent
237 of the court, shall take the person into custody and deliver him
238 or her to the nearest receiving facility for involuntary
239 examination. The order of the court shall be made a part of the
240 patient's clinical record. No fee shall be charged for the
241 filing of an order under this subsection. Any receiving facility
242 accepting the patient based on this order must send a copy of
243 the order to the Agency for Health Care Administration on the
244 next working day. The order shall be valid only until executed
245 or, if not executed, for the period specified in the order
246 itself. If no time limit is specified in the order, the order
247 shall be valid for 7 days after the date that the order was
248 signed.

249 2. A law enforcement officer shall take a person who
250 appears to meet the criteria for involuntary examination into
251 custody and deliver the person or have him or her delivered to
252 the nearest receiving facility for examination. The officer
253 shall execute a written report detailing the circumstances under
254 which the person was taken into custody, and the report shall be
255 made a part of the patient's clinical record. Any receiving
256 facility accepting the patient based on this report must send a
257 copy of the report to the Agency for Health Care Administration
258 on the next working day.

259 3. A physician, physician assistant, clinical psychologist,
260 psychiatric nurse, mental health counselor, marriage and family
261 therapist, ~~or~~ clinical social worker, or advanced registered

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262 nurse practitioner may execute a certificate stating that he or
263 she has examined a person within the preceding 48 hours and
264 finds that the person appears to meet the criteria for
265 involuntary examination and stating the observations upon which
266 that conclusion is based. If other less restrictive means are
267 not available, such as voluntary appearance for outpatient
268 evaluation, a law enforcement officer shall take the person
269 named in the certificate into custody and deliver him or her to
270 the nearest receiving facility for involuntary examination. The
271 law enforcement officer shall execute a written report detailing
272 the circumstances under which the person was taken into custody.
273 The report and certificate shall be made a part of the patient's
274 clinical record. Any receiving facility accepting the patient
275 based on this certificate must send a copy of the certificate to
276 the Agency for Health Care Administration on the next working
277 day.

278 Section 3. Paragraph (a) of subsection (3) of section
279 39.407, Florida Statutes, is amended to read:

280 39.407 Medical, psychiatric, and psychological examination
281 and treatment of child; physical, mental, or substance abuse
282 examination of person with or requesting child custody.—

283 (3) (a) 1. Except as otherwise provided in subparagraph (b) 1.
284 or paragraph (e), before the department provides psychotropic
285 medications to a child in its custody, the prescribing physician
286 shall attempt to obtain express and informed consent, as defined
287 in s. 394.455 ~~394.455(9)~~ and as described in s. 394.459(3) (a),
288 from the child's parent or legal guardian. The department must
289 take steps necessary to facilitate the inclusion of the parent
290 in the child's consultation with the physician. However, if the

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291 parental rights of the parent have been terminated, the parent's
 292 location or identity is unknown or cannot reasonably be
 293 ascertained, or the parent declines to give express and informed
 294 consent, the department may, after consultation with the
 295 prescribing physician, seek court authorization to provide the
 296 psychotropic medications to the child. Unless parental rights
 297 have been terminated and if it is possible to do so, the
 298 department shall continue to involve the parent in the
 299 decisionmaking process regarding the provision of psychotropic
 300 medications. If, at any time, a parent whose parental rights
 301 have not been terminated provides express and informed consent
 302 to the provision of a psychotropic medication, the requirements
 303 of this section that the department seek court authorization do
 304 not apply to that medication until such time as the parent no
 305 longer consents.

306 2. Any time the department seeks a medical evaluation to
 307 determine the need to initiate or continue a psychotropic
 308 medication for a child, the department must provide to the
 309 evaluating physician all pertinent medical information known to
 310 the department concerning that child.

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

313 394.495 Child and adolescent mental health system of care;
 314 programs and services.—

315 (3) Assessments must be performed by:

316 (a) A professional as defined in s. 394.455(3), (5), (27),
 317 (30), or (31) ~~394.455(2), (4), (21), (23), or (24)~~;

318 (c) A person who is under the direct supervision of a
 319 professional as defined in s. 394.455(3), (5), (27), (30), or

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320 ~~(31)~~ 394.455(2), ~~(4)~~, ~~(21)~~, ~~(23)~~, or ~~(24)~~ or a professional
 321 licensed under chapter 491.

322
 323 The department shall adopt by rule statewide standards for
 324 mental health assessments, which must be based on current
 325 relevant professional and accreditation standards.

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

328 394.496 Service planning.—

329 (6) A professional as defined in s. 394.455(3), (5), (27),
 330 (30), or (31) ~~394.455(2), (4), (21), (23), or (24)~~ or a
 331 professional licensed under chapter 491 must be included among
 332 those persons developing the services plan.

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

335 394.9085 Behavioral provider liability.—

336 (6) For purposes of this section, the terms "receiving
 337 facility," "addictions receiving facility," and "detoxification
 338 services," ~~"addictions receiving facility," and "receiving~~
 339 ~~facility"~~ have the same meanings as those provided in ss.
 340 394.455(33), 397.311(18)(a)1., and 397.311(18)(a)4.,
 341 ~~397.311(18)(a)1., and 394.455(26),~~ respectively.

342 Section 7. Paragraph (b) of subsection (2) of section
 343 409.972, Florida Statutes, is amended to read:

344 409.972 Mandatory and voluntary enrollment.—

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

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349 (b) Medicaid recipients residing in residential commitment
350 facilities operated through the Department of Juvenile Justice
351 or mental health treatment facilities as defined by s.
352 394.455(40) ~~394.455(32)~~.

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

355 744.704 Powers and duties.—

356 (7) A public guardian shall not commit a ward to a mental
357 health treatment facility, as defined in s. 394.455(40)
358 ~~394.455(32)~~, without an involuntary placement proceeding as
359 provided by law.

360 Section 9. This act shall take effect July 1, 2014.

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