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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/19/2015	.	
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The Committee on Children, Families, and Elder Affairs (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Present subsections (16) through (32) and (34) through (38) of section 394.455, Florida Statutes, are redesignated as subsections (17) through (33) and (35) through (39), respectively, a new subsection (16) is added to that section, and present subsection (33) of that section is amended, to read:



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11           394.455 Definitions.—As used in this part, unless the  
12 context clearly requires otherwise, the term:

13           (16) "Interested person" means, for the purposes of this  
14 chapter, any person who may reasonably be expected to be  
15 affected by the outcome of the particular proceeding involved,  
16 including anyone interested in the welfare of an incapacitated  
17 person.

18           ~~(34)~~~~(33)~~ "Service provider" means any public or private  
19 receiving facility, an entity under contract with the Department  
20 of Children and Families to provide mental health services, a  
21 clinical psychologist, a clinical social worker, a marriage and  
22 family therapist, a mental health counselor, a physician, a  
23 psychiatric nurse as defined in subsection ~~(24)~~ ~~(23)~~, or a  
24 community mental health center or clinic as defined in this  
25 part.

26           Section 2. Subsections (1) and (5) of section 394.4598,  
27 Florida Statutes, are amended to read:

28           394.4598 Guardian advocate.—

29           (1) The administrator, a family member of the patient, or  
30 an interested party, may petition the court for the appointment  
31 of a guardian advocate based upon the opinion of a psychiatrist  
32 that the patient is incompetent to consent to treatment. If the  
33 court finds that a patient is incompetent to consent to  
34 treatment and has not been adjudicated incapacitated and a  
35 guardian with the authority to consent to mental health  
36 treatment appointed, it shall appoint a guardian advocate. The  
37 patient has the right to have an attorney represent him or her  
38 at the hearing. If the person is indigent, the court shall  
39 appoint the office of the public defender to represent him or



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40 her at the hearing. The patient has the right to testify, cross-  
41 examine witnesses, and present witnesses. The proceeding shall  
42 be recorded either electronically or stenographically, and  
43 testimony shall be provided under oath. One of the professionals  
44 authorized to give an opinion in support of a petition for  
45 involuntary placement, as described in s. 394.4655 or s.  
46 394.467, must testify. A guardian advocate must meet the  
47 qualifications of a guardian contained in part IV of chapter  
48 744, except that a professional referred to in this part, an  
49 employee of the facility providing direct services to the  
50 patient under this part, a departmental employee, a facility  
51 administrator, or member of the Florida local advocacy council  
52 shall not be appointed. A person who is appointed as a guardian  
53 advocate must agree to the appointment.

54 (5) In selecting a guardian advocate, the court shall give  
55 preference to a health care, mental health care, or substance  
56 abuse treatment surrogate, if one has already been designated by  
57 the patient. If the patient has not previously selected a health  
58 care, mental health care, or substance abuse treatment  
59 surrogate, except for good cause documented in the court record,  
60 the selection shall be made from the following list in the order  
61 of listing:

- 62 (a) The patient's spouse.
- 63 (b) An adult child of the patient.
- 64 (c) A parent of the patient.
- 65 (d) The adult next of kin of the patient.
- 66 (e) An adult friend of the patient.
- 67 (f) An adult trained and willing to serve as guardian  
68 advocate for the patient.



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69 Section 3. Section 397.803, Florida Statutes, is created to  
70 read:

71 397.803 Substance Abuse Assistance Pilot Program.—

72 (1) PILOT PROGRAM.—

73 (a) There is created within the Department of Children and  
74 Families the Substance Abuse Assistance Pilot Program in such  
75 regions of the state as may be designated in the general  
76 appropriations act.

77 (b) Within available funding, the department shall  
78 determine a target number of participants in each pilot program  
79 region.

80 (c) The pilot program is created to determine whether the  
81 provision of comprehensive care through a coordinated system of  
82 case management that offers a range of recovery support services  
83 during and after treatment for acute episodes leads to increased  
84 employment, stability in housing, and decreased involvement in  
85 the criminal justice system on the part of participants.

86 (d) The pilot program shall provide a comprehensive  
87 continuum of high-quality and accessible substance abuse  
88 intervention, residential and outpatient treatment,  
89 comprehensive case management, and recovery support services for  
90 substance abuse impaired adults.

91 (e) The pilot program in each selected region shall develop  
92 safe and cost efficient treatment alternatives and provide  
93 comprehensive case management and continuum of care services for  
94 eligible substance abuse impaired adults.

95 (f) Participation in the pilot program may be designated as  
96 an alternative to criminal imprisonment for substance abuse  
97 impaired adults, as appropriate.



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98           (g) Each pilot program region shall submit data to the  
99 department on a monthly basis that, at a minimum, reports  
100 characteristics of the participants, use of services, and such  
101 data as necessary to measure changes in participants' status  
102 with regard to housing, employment, and criminal activity.

103           (2) ELIGIBILITY AND ENROLLMENT.—Maximum enrollment shall be  
104 determined by the department, based on funding. To be eligible  
105 for participation in the pilot program a person must:

106           (a) Be 18 years of age or older with a history of chronic  
107 substance abuse or addiction.

108           (b) Execute a mental health or substance abuse treatment  
109 directive as defined in s. 765.403.

110           (c) Include in the mental health or substance abuse  
111 treatment directive a self-binding arrangement provision that  
112 must:

113           1. Be in writing.

114           2. Be dated and signed by the principal or the principal's  
115 designated representative if the principal is unable to sign.

116           3. State whether the principal wishes to be able to revoke  
117 the directive at any time or whether the directive remains  
118 irrevocable when the principal is unable to consent to treatment  
119 or is incapacitated. Failure to clarify whether the directive is  
120 revocable does not render it unenforceable. If the directive  
121 fails to state whether it is revocable, the principal may revoke  
122 it at any time.

123           4. Contain a clear affirmation that the principal is aware  
124 of the nature of the document signed and that the directive was  
125 signed freely and voluntarily.

126           5. Be witnessed by at least two adults who, for the



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127 purposes of this section, may not be:  
128       a. A member of the principal's treatment team;  
129       b. Related to the principal by blood, adoption, or  
130 marriage;  
131       c. Be in a romantic or dating relationship with the  
132 principal;  
133       d. The surrogate named by the principal in the signed  
134 directive; or  
135       e. The owner, operator, or employee of, or a relative of  
136 the owner, operator, or an employee of, a treatment facility in  
137 which the principal is a patient.  
138       6. Be witnessed by persons who attest that:  
139           a. They were present when the principal signed the  
140 directive;  
141           b. The principal appeared to have capacity and not be under  
142 undue influence or duress when he or she signed the directive;  
143 and  
144           c. The principal presented identification or the witness  
145 personally knows the principal.  
146       7. If the directive includes a provision that it is  
147 irrevocable, it must contain a written, signed attestation from  
148 a mental health professional that the principal had capacity at  
149 the time the directive was executed. If the principal is free to  
150 revoke the directive at any time, such attestation is not  
151 required.  
152       8. Be valid upon execution.  
153       9. Contain a designated activation standard other than the  
154 principal's inability to provide consent to treatment or  
155 incapacity by describing circumstances or events under which the



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156 directive becomes active.

157 10. Affirmatively state that despite activation, a  
158 directive does not prevail over contemporaneous preferences  
159 expressed by a principal who has capacity or the ability to  
160 consent to treatment and has not included a self-binding  
161 arrangement provision in the directive.

162 11. Appoint a surrogate to make all health care and  
163 substance abuse treatment decisions for the principal, including  
164 decisions to consent on behalf of the principal to inpatient  
165 mental health or substance abuse treatment.

166 12. Contain a provision that decisions made by a surrogate  
167 for a principal's mental health care or substance abuse  
168 treatment are effective without judicial approval.

169 (d) Share responsibility for the costs of pilot program  
170 services according to his or her ability to pay, based on a  
171 sliding scale.

172 (3) SYSTEM OF CARE; CASE MANAGEMENT; PAYMENT METHOD.-

173 (a) The department shall contract with the Medicaid managed  
174 care organization or behavioral health managing entity operating  
175 in the applicable geographic region to serve as program manager.

176 (b) The program manager is responsible for the following  
177 functions:

178 1. Network management including recruitment and retention  
179 of an adequate number of qualified service providers to ensure  
180 accessibility and quality of care;

181 2. Coordination of care, including the development and  
182 implementation of organizational structures and operational  
183 policies necessary to ensure that the network provides  
184 continuity of care and avoids unnecessary duplication of



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185 services;

186 3. Comprehensive case management, which may be provided by  
187 the program manager or by a contracted service provider,  
188 including direct interaction with participants and other  
189 activities necessary to assess, plan, implement, and monitor the  
190 needed services; and

191 4. Administrative functions for the network including, but  
192 not limited to, data management, financial management, and  
193 contract compliance.

194 (c) The department shall establish criteria for ensuring  
195 that an adequate number of providers are included in the network  
196 and for provider qualifications, which shall be specified in the  
197 contract with the program manager. The pilot program shall be  
198 limited to one network in the region for the duration of the  
199 pilot program. The provider network shall:

200 1. Offer a comprehensive range of services for substance  
201 abuse impaired or drug addicted adults.

202 2. Enter into agreements with law enforcement agencies and  
203 the criminal justice system to divert nonviolent offenders with  
204 histories of serious substance abuse or chronic addiction into  
205 intensive treatment, comprehensive case management, and  
206 rehabilitation services.

207 3. Enter into an agreement with the appropriate  
208 neighborhood housing services program to provide housing  
209 assistance to eligible participants.

210 4. Enter into an agreement with the entity under contract  
211 with the Statewide Public Guardianship Office in the pilot  
212 program region to provide guardians to act in the capacity of  
213 surrogates for eligible participants who do not have family





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214 members or other adults available to perform such duties.  
215 5. Enter into an agreement with the applicable nonprofit  
216 local legal services organization serving the pilot program  
217 region to provide legal assistance to eligible participants.  
218 (4) SERVICES.—The network must be capable of providing, at  
219 a minimum, the following services to substance abuse impaired or  
220 drug addicted adults:  
221 1. Comprehensive case management and continuum of care  
222 coordination;  
223 2. Outpatient treatment services;  
224 3. Crisis care, including mobile response, and  
225 detoxification in short-term residential facilities;  
226 4. Inpatient treatment services;  
227 5. Step-down residential treatment services;  
228 6. Housing needs assessment and assistance;  
229 7. Employment assistance programs;  
230 8. Transportation needs assessment and assistance; and  
231 9. Legal services.  
232 (5) PAYMENT FOR SERVICES.—  
233 (a) The general revenue funds appropriated by the  
234 legislature for the purposes of this section shall be applied to  
235 payment for services only after an eligible participant's  
236 private pay or Medicaid insurance coverage has been exhausted.  
237 (b) An eligible participant may share in the cost of  
238 provided services based on his or her ability to pay.  
239 (6) ACCOUNTABILITY; ANNUAL REPORTS.—  
240 (a) By October 1 of each year, the department shall provide  
241 a written report to the Governor, the President of the Senate,  
242 and the Speaker of the House of Representatives which describes



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243 the operation and effectiveness of the pilot program. The report  
244 must include, but is not limited to, an evaluation of the impact  
245 of the following components of the program:

- 246 1. Comprehensive case management;  
247 2. Care coordination and followup care;  
248 3. Housing initiatives; and  
249 4. Employment assistance.

250 (b) The report must include a recommendation regarding the  
251 continuation, expansion, or termination of the pilot program.

252 Section 4. Section 765.401, Florida Statutes, is  
253 transferred and renumbered as section 765.311, Florida Statutes.

254 Section 5. Section 765.404, Florida Statutes, is  
255 transferred and renumbered as section 765.312, Florida Statutes.

256 Section 6. The Division of Law Revision and Information is  
257 directed to rename part IV of chapter 765, Florida Statutes, as  
258 "Mental Health and Substance Abuse Advance Directives."

259 Section 7. Section 765.4015, Florida Statutes, is created  
260 to read:

261 765.4015 Short title.—Sections 765.402-765.411 may be cited  
262 as the "Jennifer Act."

263 Section 8. Section 765.402, Florida Statutes, is created to  
264 read:

265 765.402 Legislative findings.—

266 (1) The Legislature recognizes that an individual with  
267 capacity has the ability to control decisions relating to his or  
268 her own mental health care or substance abuse treatment. The  
269 Legislature finds that:

270 (a) Substance abuse and some mental illnesses cause  
271 individuals to fluctuate between capacity and incapacity;



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272 (b) During periods when an individual's capacity is  
273 unclear, the individual may be unable to provide informed  
274 consent necessary to access needed treatment;

275 (c) Early treatment may prevent an individual from becoming  
276 so ill that involuntary treatment is necessary; and

277 (d) Individuals with substance abuse impairment or mental  
278 illness need an established procedure to express their  
279 instructions and preferences for treatment and provide advance  
280 consent to or refusal of treatment. This procedure should be  
281 less expensive and less restrictive than guardianship.

282 (2) The Legislature further recognizes that:

283 (a) A mental health or substance abuse treatment advance  
284 directive must provide the individual with a full range of  
285 choices.

286 (b) For a mental health or substance abuse directive to be  
287 an effective tool, individuals must be able to choose how they  
288 want their directives to be applied, including the right of  
289 revocation, during periods when they are incompetent to consent  
290 to treatment.

291 (c) There must be a clear process so that treatment  
292 providers can abide by an individual's treatment choices.

293 Section 9. Section 765.403, Florida Statutes, is created to  
294 read:

295 765.403 Definitions.—As used in this section, the term:

296 (1) "Adult" means any individual who has attained the age  
297 of majority or is an emancipated minor.

298 (2) "Capacity" means that an adult has not been found to be  
299 incapacitated pursuant to s. 394.463.

300 (3) "Health care facility" means a hospital, nursing home,



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301 hospice, home health agency, or health maintenance organization  
302 licensed in this state, or any facility subject to part I of  
303 chapter 394.

304 (4) "Incapacity" or "incompetent" means an adult who is:

305 (a) Unable to understand the nature, character, and  
306 anticipated results of proposed treatment or alternatives or the  
307 recognized serious possible risks, complications, and  
308 anticipated benefits of treatments and alternatives, including  
309 nontreatment;

310 (b) Physically or mentally unable to communicate a willful  
311 and knowing decision about mental health care or substance abuse  
312 treatment;

313 (c) Unable to communicate his or her understanding or  
314 treatment decisions; or

315 (d) Determined incompetent pursuant to s. 394.463.

316 (5) "Informed consent" means consent voluntarily given by a  
317 person after a sufficient explanation and disclosure of the  
318 subject matter involved to enable that person to have a general  
319 understanding of the treatment or procedure and the medically  
320 acceptable alternatives, including the substantial risks and  
321 hazards inherent in the proposed treatment or procedures or  
322 nontreatment, and to make knowing mental health care or  
323 substance abuse treatment decisions without coercion or undue  
324 influence.

325 (6) "Mental health or substance abuse treatment advance  
326 directive" means a written document in which the principal makes  
327 a declaration of instructions or preferences or appoints a  
328 surrogate to make decisions on behalf of the principal regarding  
329 the principal's mental health or substance abuse treatment, or



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330 both.

331 (7) "Mental health professional" means a psychiatrist,  
332 psychologist, psychiatric nurse, or social worker, and such  
333 other mental health professionals licensed pursuant to chapter  
334 458, chapter 464, chapter 490, or chapter 491.

335 (8) "Principal" means a competent adult who executes a  
336 mental health or substance abuse treatment advance directive and  
337 on whose behalf mental health care or substance abuse treatment  
338 decisions are to be made.

339 (9) "Surrogate" means any competent adult expressly  
340 designated by a principal to make mental health care or  
341 substance abuse treatment decisions on behalf of the principal  
342 as set forth in the principal's mental health or substance abuse  
343 treatment advance directive or self-binding arrangement as those  
344 terms are defined in this section.

345 Section 10. Section 765.405, Florida Statutes, is created  
346 to read:

347 765.405 Mental health or substance abuse treatment advance  
348 directive; execution; allowable provisions.-

349 (1) An adult with capacity may execute a mental health or  
350 substance abuse treatment advance directive.

351 (2) A directive executed in accordance with this section is  
352 presumed to be valid. The inability to honor one or more  
353 provisions of a directive does not affect the validity of the  
354 remaining provisions.

355 (3) A directive may include any provision relating to  
356 mental health or substance abuse treatment or the care of the  
357 principal. Without limitation, a directive may include:

358 (a) The principal's preferences and instructions for mental



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359 health or substance abuse treatment.

360 (b) Consent to specific types of mental health or substance  
361 abuse treatment.

362 (c) Refusal to consent to specific types of mental health  
363 or substance abuse treatment.

364 (d) Consent to admission to and retention in a facility for  
365 mental health or substance abuse treatment for up to 14 days.

366 Such consent must be an affirmative statement contained within  
367 the directive and must clearly indicate whether such consent is  
368 revocable by the principal during a mental health or substance  
369 abuse crisis.

370 (e) Descriptions of situations that may cause the principal  
371 to experience a mental health or substance abuse crisis.

372 (f) Suggested alternative responses that may supplement or  
373 be in lieu of direct mental health or substance abuse treatment,  
374 such as treatment approaches from other providers.

375 (g) The principal's nomination of a guardian, limited  
376 guardian, or guardian advocate as provided chapter 744.

377 (4) A directive may be combined with or be independent of a  
378 nomination of a guardian, other durable power of attorney, or  
379 other advance directive.

380 Section 11. Section 765.406, Florida Statutes, is created  
381 to read:

382 765.406 Execution of a mental health or substance abuse  
383 advance directive; effective date; expiration.-

384 (1) A directive must:

385 (a) Be in writing.

386 (b) Contain language that clearly indicates that the  
387 principal intends to create a directive.



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388       (c) Contain language that clearly indicates whether the  
389 principal intends for the surrogate to have the authority to  
390 provide consent on the principal's behalf to voluntary admission  
391 to inpatient mental health or substance abuse treatment and  
392 whether the principal's consent is revocable.

393       (d) Be dated and signed by the principal or, if the  
394 principal is unable to sign, at the principal's direction in the  
395 principal's presence.

396       (e) Be witnessed by two adults, each of whom must declare  
397 that he or she personally knows the principal and was present  
398 when the principal dated and signed the directive, and that the  
399 principal did not appear to be incapacitated or acting under  
400 fraud, undue influence, or duress. The person designated as the  
401 surrogate may not act as a witness to the execution of the  
402 document designating the mental health or substance abuse care  
403 treatment surrogate. At least one person who acts as a witness  
404 must be neither the principal's spouse nor his or her blood  
405 relative.

406       (2) A directive is valid upon execution, but all or part of  
407 the directive may take effect at a later date as designated by  
408 the principal in the directive.

409       (3) A directive may:

410       (a) Be revoked, in whole or in part, pursuant to s.  
411 765.407; or

412       (b) Expire under its own terms.

413       (4) A directive does not or may not:

414       (a) Create an entitlement to mental health, substance  
415 abuse, or medical treatment or supersede a determination of  
416 medical necessity.



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417 (b) Obligate any health care provider, professional person,  
418 or health care facility to pay the costs associated with the  
419 treatment requested.

420 (c) Obligate a health care provider, professional person,  
421 or health care facility to be responsible for the nontreatment  
422 or personal care of the principal or the principal's personal  
423 affairs outside the scope of services the facility normally  
424 provides.

425 (d) Replace or supersede any will or testamentary document  
426 or supersede the provision of intestate succession.

427 (e) Be revoked by an incapacitated principal unless that  
428 principal selected the option to permit revocation while  
429 incapacitated at the time his or her directive was executed.

430 (f) Be used as the authority for inpatient admission for  
431 more than 14 days.

432 Section 12. Section 765.407, Florida Statutes, is created  
433 to read:

434 765.407 Revocation; waiver.—

435 (1) (a) A principal with capacity may, by written statement  
436 of the principal or at the principal's direction in the  
437 principal's presence, revoke a directive in whole or in part.

438 (b) A person incompetent to consent to treatment may revoke  
439 a directive only if he or she elected at the time of executing  
440 the directive to be able to revoke when incapacitated.

441 (2) The principal shall provide a copy of his or her  
442 written statement of revocation to his or her agent, if any, and  
443 to each health care provider, professional person, or health  
444 care facility that received a copy of the directive from the  
445 principal.





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446 (3) The written statement of revocation is effective as to  
447 a health care provider, professional person, or health care  
448 facility upon receipt. The professional person, health care  
449 provider, or health care facility, or persons acting under their  
450 direction, shall make the statement of revocation part of the  
451 principal's medical record.

452 (4) A directive also may:

453 (a) Be revoked, in whole or in part, expressly or to the  
454 extent of any inconsistency, by a subsequent directive; or

455 (b) Be superseded or revoked by a court order, including  
456 any order entered in a criminal matter. The individual's family,  
457 the health care facility, the attending physician, or any other  
458 interested person who may be directly affected by the  
459 surrogate's decision concerning any health care may seek  
460 expedited judicial intervention pursuant to rule 5.900 of the  
461 Florida Probate Rules, if that person believes:

462 1. The surrogate's decision is not in accord with the  
463 individual's known desires;

464 2. The advance directive is ambiguous, or the individual  
465 has changed his or her mind after execution of the advance  
466 directive;

467 3. The surrogate was improperly designated or appointed, or  
468 the designation of the surrogate is no longer effective or has  
469 been revoked;

470 4. The surrogate has failed to discharge duties, or  
471 incapacity or illness renders the surrogate incapable of  
472 discharging duties;

473 5. The surrogate has abused powers; or

474 6. The individual has sufficient capacity to make his or



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475 her own health care decisions.

476 (5) A directive that would have otherwise expired but is  
477 effective because the principal is incapacitated remains  
478 effective until the principal is no longer incapacitated unless  
479 the principal elected to be able to revoke while incapacitated  
480 and has revoked the directive.

481 (6) When a principal with capacity consents to treatment  
482 that differs from, or refuses treatment consented to in, his or  
483 her directive, the consent or refusal constitutes a waiver of a  
484 particular provision and does not constitute a revocation of the  
485 provision or the directive unless that principal also revokes  
486 the provision or directive.

487 Section 13. Section 765.410, Florida Statutes, is created  
488 to read:

489 765.410 Immunity from liability; weight of proof;  
490 presumption.-

491 (1) A health care facility, provider, or other person who  
492 acts under the direction of a health care facility or provider  
493 is not subject to criminal prosecution or civil liability, and  
494 may not be deemed to have engaged in unprofessional conduct, as  
495 a result of carrying out a mental health care or substance abuse  
496 treatment decision made in accordance with this section. The  
497 surrogate who makes a mental health care or substance abuse  
498 treatment decision on a principal's behalf, pursuant to this  
499 section, is not subject to criminal prosecution or civil  
500 liability for such action.

501 (2) This section applies unless it is shown by a  
502 preponderance of the evidence that the person authorizing or  
503 effectuating a mental health or substance abuse treatment



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504 decision did not, in good faith, comply with this section.

505 Section 14. Section 765.411, Florida Statutes, is created  
506 to read:

507 765.411 Recognition of mental health and substance abuse  
508 treatment advance directive executed in another state.—A mental  
509 health or substance abuse treatment advance directive executed  
510 in another state in compliance with the law of that state is  
511 validly executed for the purposes of this chapter.

512 Section 15. Subsection (3) of section 394.495, Florida  
513 Statutes, is amended to read:

514 394.495 Child and adolescent mental health system of care;  
515 programs and services.—

516 (3) Assessments must be performed by:

517 (a) A professional as defined in s. 394.455(2), (4), (22)  
518 ~~(21)~~, (24) ~~(23)~~, or (25) ~~(24)~~;

519 (b) A professional licensed under chapter 491; or

520 (c) A person who is under the direct supervision of a  
521 professional as defined in s. 394.455(2), (4), (22) ~~(21)~~, (24)  
522 ~~(23)~~, or (25) ~~(24)~~ or a professional licensed under chapter 491.

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

527 Section 16. Subsection (6) of section 394.496, Florida  
528 Statutes, is amended to read:

529 394.496 Service planning.—

530 (6) A professional as defined in s. 394.455(2), (4), (22)  
531 ~~(21)~~, (24) ~~(23)~~, or (25) ~~(24)~~ or a professional licensed under  
532 chapter 491 must be included among those persons developing the



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533 services plan.

534 Section 17. Subsection (6) of section 394.9085, Florida  
535 Statutes, is amended to read:

536 394.9085 Behavioral provider liability.—

537 (6) For purposes of this section, the terms “detoxification  
538 services,” “addictions receiving facility,” and “receiving  
539 facility” have the same meanings as those provided in ss.  
540 397.311(18)(a)4., 397.311(18)(a)1., and 394.455 (27) ~~(26)~~,  
541 respectively.

542 Section 18. Paragraph (d) of subsection (1) of section  
543 395.0197, Florida Statutes, is amended to read:

544 395.0197 Internal risk management program.—

545 (1) Every licensed facility shall, as a part of its  
546 administrative functions, establish an internal risk management  
547 program that includes all of the following components:

548 (d) A system for informing a patient or an individual  
549 identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~ that the  
550 patient was the subject of an adverse incident, as defined in  
551 subsection (5). Such notice shall be given by an appropriately  
552 trained person designated by the licensed facility as soon as  
553 practicable to allow the patient an opportunity to minimize  
554 damage or injury.

555 Section 19. Section 395.1051, Florida Statutes, is amended  
556 to read:

557 395.1051 Duty to notify patients.—An appropriately trained  
558 person designated by each licensed facility shall inform each  
559 patient, or an individual identified pursuant to s. 765.311(1)  
560 ~~s. 765.401(1)~~, in person about adverse incidents that result in  
561 serious harm to the patient. Notification of outcomes of care



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562 that result in harm to the patient under this section shall not  
563 constitute an acknowledgment or admission of liability, nor can  
564 it be introduced as evidence.

565 Section 20. Paragraph (b) of subsection (1) of section  
566 409.972, Florida Statutes, is amended to read:

567 409.972 Mandatory and voluntary enrollment.—

568 (1) The following Medicaid-eligible persons are exempt from  
569 mandatory managed care enrollment required by s. 409.965, and  
570 may voluntarily choose to participate in the managed medical  
571 assistance program:

572 (b) Medicaid recipients residing in residential commitment  
573 facilities operated through the Department of Juvenile Justice  
574 or mental health treatment facilities as defined by s.  
575 394.455(33) ~~s. 394.455(32)~~.

576 Section 21. Section 456.0575, Florida Statutes, is amended  
577 to read:

578 456.0575 Duty to notify patients.—Every licensed health  
579 care practitioner shall inform each patient, or an individual  
580 identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~, in person  
581 about adverse incidents that result in serious harm to the  
582 patient. Notification of outcomes of care that result in harm to  
583 the patient under this section shall not constitute an  
584 acknowledgment of admission of liability, nor can such  
585 notifications be introduced as evidence.

586 Section 22. Subsection (7) of section 744.704, Florida  
587 Statutes, is amended to read:

588 744.704 Powers and duties.—

589 (7) A public guardian shall not commit a ward to a mental  
590 health treatment facility, as defined in s. 394.455(33) ~~s.~~



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591 ~~394.455(32)~~, without an involuntary placement proceeding as  
592 provided by law.

593 Section 23. Subsection (15) of section 765.101, Florida  
594 Statutes, is amended to read:

595 765.101 Definitions.—As used in this chapter:

596 (15) "Proxy" means a competent adult who has not been  
597 expressly designated to make health care decisions for a  
598 particular incapacitated individual, but who, nevertheless, is  
599 authorized pursuant to s. 765.311 ~~s. 765.401~~ to make health care  
600 decisions for such individual.

601 Section 24. Subsection (4) of section 765.104, Florida  
602 Statutes, is amended to read:

603 765.104 Amendment or revocation.—

604 (4) Any patient for whom a medical proxy has been  
605 recognized under s. 765.311 ~~s. 765.401~~ and for whom any previous  
606 legal disability that precluded the patient's ability to consent  
607 is removed may amend or revoke the recognition of the medical  
608 proxy and any uncompleted decision made by that proxy. The  
609 amendment or revocation takes effect when it is communicated to  
610 the proxy, the health care provider, or the health care facility  
611 in writing or, if communicated orally, in the presence of a  
612 third person.

613 Section 25. Paragraph (b) of subsection (3) of s. 394.459,  
614 subsections (6) and (7) of s. 394.4598, paragraph (d) of  
615 subsection (6) and paragraph (f) of subsection (7) of s.  
616 394.4655, paragraph (d) of subsection (6) of s. 394.467, s.  
617 394.46715, and subsection (5) of s. 765.202, Florida Statutes,  
618 are reenacted for the purpose of incorporating the amendments  
619 made to s. 394.4598, Florida Statutes.



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620 Section 26. This act shall take effect July 1, 2015.

621

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

623 And the title is amended as follows:

624 Delete everything before the enacting clause  
625 and insert:

626 A bill to be entitled  
627 An act relating to mental health and substance abuse;  
628 amending s. 394.455, F.S.; defining the term  
629 "interested person"; amending s. 394.4598, F.S.;  
630 authorizing a family member of a patient or an  
631 interested party to petition a court for the  
632 appointment of a guardian advocate; requiring a court  
633 to give preference to certain specified surrogates if  
634 such surrogate has already been designated by the  
635 patient; creating s. 397.803, F.S.; establishing the  
636 Substance Abuse Assistance Pilot Program within the  
637 Department of Children and Families; requiring the  
638 department to determine a target number of  
639 participants within available funds; providing the  
640 purpose of the pilot program; requiring the program to  
641 develop safe and cost efficient treatment alternatives  
642 and provide comprehensive case management services for  
643 eligible substance abuse impaired adults; authorizing  
644 participation in the program as an alternative to  
645 criminal imprisonment; requiring that each pilot  
646 program submit specified data to the department on a  
647 monthly basis; providing eligibility criteria;  
648 requiring that maximum enrollment be determined by the



649 department based on available funding; requiring the  
650 department to contract with specified entities to  
651 serve as program managers; specifying the functions of  
652 the program manager; requiring the department to  
653 establish certain criteria and qualifications for the  
654 project manager; requiring that a pilot program site  
655 have only one network in a given region; providing  
656 requirements for provider networks; specifying  
657 services that must be provided by a provider network;  
658 specifying that the primary payor for services  
659 provided through the program is the participant's  
660 private pay or Medicaid insurance coverage; allowing  
661 eligible participants to share in the cost of provided  
662 services based on ability to pay; requiring the  
663 department to provide an annual report to the Governor  
664 and Legislature evaluating the impact of the program;  
665 requiring such report to include specified  
666 information; transferring and renumbering s. 765.401,  
667 F.S.; transferring and renumbering s. 765.404, F.S.;  
668 providing a directive to the Division of Law Revision  
669 and Information; creating s. 765.4015, F.S.; providing  
670 a short title; creating s. 765.402, F.S.; providing  
671 legislative findings; creating s. 765.403, F.S.;  
672 defining terms; creating s. 765.405, F.S.; authorizing  
673 an adult with capacity to execute a mental health or  
674 substance abuse treatment advance directive; providing  
675 a presumption of validity if certain requirements are  
676 met; providing for execution of the mental health or  
677 substance abuse treatment advance directive; creating





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678 s. 765.406, F.S.; establishing requirements for a  
679 valid mental health or substance abuse treatment  
680 advance directive; providing that a mental health or  
681 substance abuse treatment directive is valid upon  
682 execution even if a part of the mental health or  
683 substance abuse treatment directive takes effect at a  
684 later date; allowing a mental health or substance  
685 abuse treatment advance directive to be revoked, in  
686 whole or in part, or to expire under its own terms;  
687 specifying that a mental health or substance abuse  
688 treatment advance directive does not or may not serve  
689 specified purposes; creating s. 765.407, F.S.;

690 providing circumstances under which a mental health or  
691 substance abuse treatment advance directive may be  
692 revoked; providing circumstances under which a  
693 principal may waive specific directive provisions  
694 without revoking the directive; creating s. 765.410,  
695 F.S.; prohibiting criminal prosecution of a health  
696 care facility, provider, or surrogate who acts  
697 pursuant to a mental health or substance abuse  
698 treatment decision; creating s. 765.411, F.S.;

699 providing for recognition of a mental health and  
700 substance abuse treatment advance directive executed  
701 in another state if it complies with the laws of this  
702 state; amending ss. 394.495, 394.496, 394.9085  
703 395.0197, 395.1051, 409.972, 456.0575, 744.704,  
704 765.101, and 765.104, F.S.; conforming cross-  
705 references; reenacting ss. 394.459(3)(b), 394.4598(6)  
706 and (7), 394.4655(6)(d) and (7)(f), 394.467(6)(d),



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707 394.46715, and 765.202(5), F.S., to incorporate the  
708 amendment made to s. 394.4598, F.S., in references  
709 thereto; providing an effective date.