

By Senator Latvala

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1                                   A bill to be entitled  
2           An act relating to mental health and substance abuse;  
3           amending s. 394.4598, F.S.; authorizing a family  
4           member of a patient or an interested party to petition  
5           a court for the appointment of a guardian advocate;  
6           requiring a court to give preference to certain  
7           specified surrogates if such surrogate has already  
8           been designated by the patient; creating s. 397.803,  
9           F.S.; establishing the Substance Abuse Assistance  
10          Pilot Program within the Department of Children and  
11          Families; requiring the department to determine a  
12          target number of participants within available funds;  
13          providing the purpose of the pilot program; requiring  
14          the program to develop safe and cost efficient  
15          treatment alternatives and provide comprehensive case  
16          management services for eligible substance abuse  
17          impaired adults; authorizing participation in the  
18          program as an alternative to criminal imprisonment;  
19          requiring that each pilot program submit specified  
20          data to the department on a monthly basis; providing  
21          eligibility criteria; requiring that maximum  
22          enrollment be determined on the basis of available  
23          funding; requiring the department to contract with  
24          specified entities to serve as program managers;  
25          specifying the functions of the program manager;  
26          requiring the department to establish certain criteria  
27          and qualifications for the project manager; requiring  
28          a pilot program site to only have one network in the  
29          region; providing requirements for provider networks;

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30 specifying services that must be provided by a  
31 provider network; specifying that the primary payor  
32 for services provided through the program is the  
33 participant's private pay or Medicaid insurance  
34 coverage; allowing eligible participants to share in  
35 the cost of provided services based on ability to pay;  
36 requiring the department to provide an annual report  
37 to the Governor and Legislature evaluating the impact  
38 of the program; requiring such report to include  
39 specified information; transferring and renumbering s.  
40 765.401, F.S.; transferring and renumbering s.  
41 765.404, F.S.; providing a directive to the Division  
42 of Law Revision and Information; creating s. 765.4015,  
43 F.S.; providing a short title; creating s. 765.402,  
44 F.S.; providing legislative findings; creating s.  
45 765.403, F.S.; defining terms; creating s. 765.405,  
46 F.S.; authorizing an adult with capacity to execute a  
47 mental health or substance abuse treatment advance  
48 directive; providing a presumption of validity if  
49 certain requirements are met; providing for execution  
50 of the mental health or substance abuse treatment  
51 advanced directive; creating s. 765.406, F.S.;  
52 establishing requirements for a valid mental health or  
53 substance abuse treatment advance directive; providing  
54 that a mental health or substance abuse treatment  
55 directive is valid upon execution even if a part of  
56 the mental health or substance abuse treatment  
57 directive takes effect at a later date; allowing a  
58 mental health or substance abuse treatment directive

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59 to be revoked, in whole or in part, or to expire under  
60 its own terms; specifying that a mental health or  
61 substance abuse treatment advance directive does not  
62 or may not serve specified purposes; creating s.  
63 765.407, F.S.; providing circumstances under which a  
64 mental health or substance abuse treatment advance  
65 directive may be revoked; providing circumstances  
66 under which a principal may waive specific directive  
67 provisions without revoking the directive; creating s.  
68 765.408, F.S.; providing legislative findings and  
69 legislative intent for self-binding arrangements;  
70 providing requirements for creating such arrangements;  
71 creating s. 765.409, F.S.; specifying the conditions  
72 under which a principal may be admitted for inpatient  
73 mental health or substance abuse treatment; providing  
74 that creation of an irrevocable directive of consent  
75 to inpatient treatment creates a rebuttable  
76 presumption of incapacity; authorizing a principal to  
77 be admitted to, or remain in, inpatient treatment for  
78 up to 14 days; requiring express consent in a  
79 directive for the administration of psychotropic  
80 medication; requiring conditions for administering  
81 such medication; prohibiting a principal from  
82 authorizing psychosurgery or electroconvulsive therapy  
83 in a directive; authorizing a principal to seek  
84 specified injunctive relief; creating s. 765.410,  
85 F.S.; prohibiting criminal prosecution of a health  
86 care facility, provider, or surrogate who acts  
87 pursuant to a mental health or substance abuse

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88 treatment decision; creating s. 765.411, F.S.;

89 providing for recognition of a mental health and

90 substance abuse treatment advanced directive executed

91 in another state if it complies with the laws of this

92 state; amending ss. 395.0197, 395.1051, 456.0575,

93 765.101, and 765.104, F.S.; conforming cross-

94 references; reenacting ss. 394.459(3)(b), 394.4598(6)

95 and (7), 394.4655(6)(d) and (7)(f), 394.467(6)(d),

96 394.46715, and 765.202(5), F.S., to incorporate the

97 amendment made to s. 394.4598, F.S., in references

98 thereto; providing an effective date.

99

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

101

102 Section 1. Subsections (1) and (5) of section 394.4598,

103 Florida Statutes, are amended to read:

104 394.4598 Guardian advocate.—

105 (1) The administrator, a family member of the patient, or

106 an interested party, may petition the court for the appointment

107 of a guardian advocate based upon the opinion of a psychiatrist

108 that the patient is incompetent to consent to treatment. If the

109 court finds that a patient is incompetent to consent to

110 treatment and has not been adjudicated incapacitated and a

111 guardian with the authority to consent to mental health

112 treatment appointed, it shall appoint a guardian advocate. The

113 patient has the right to have an attorney represent him or her

114 at the hearing. If the person is indigent, the court shall

115 appoint the office of the public defender to represent him or

116 her at the hearing. The patient has the right to testify, cross-

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117 examine witnesses, and present witnesses. The proceeding shall  
118 be recorded either electronically or stenographically, and  
119 testimony shall be provided under oath. One of the professionals  
120 authorized to give an opinion in support of a petition for  
121 involuntary placement, as described in s. 394.4655 or s.  
122 394.467, must testify. A guardian advocate must meet the  
123 qualifications of a guardian contained in part IV of chapter  
124 744, except that a professional referred to in this part, an  
125 employee of the facility providing direct services to the  
126 patient under this part, a departmental employee, a facility  
127 administrator, or member of the Florida local advocacy council  
128 shall not be appointed. A person who is appointed as a guardian  
129 advocate must agree to the appointment.

130 (5) In selecting a guardian advocate, the court shall give  
131 preference to a health care, mental health care, or substance  
132 abuse treatment surrogate, if one has already been designated by  
133 the patient. If the patient has not previously selected a health  
134 care, mental health care, or substance abuse treatment  
135 surrogate, except for good cause documented in the court record,  
136 the selection shall be made from the following list in the order  
137 of listing:

- 138 (a) The patient's spouse.  
139 (b) An adult child of the patient.  
140 (c) A parent of the patient.  
141 (d) The adult next of kin of the patient.  
142 (e) An adult friend of the patient.  
143 (f) An adult trained and willing to serve as guardian  
144 advocate for the patient.

145 Section 2. Section 397.803, Florida Statutes, is created to

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146 read:

147 397.803 Substance Abuse Assistance Pilot Program.-

148 (1) PILOT PROGRAM.-

149 (a) There is created within the Department of Children and  
150 Families the Substance Abuse Assistance Pilot Program in such  
151 regions of the state as may be designated in the general  
152 appropriations act.

153 (b) Within available funding, the department shall  
154 determine a target number of participants in each pilot program  
155 region.

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

162 (d) The pilot program shall provide a comprehensive  
163 continuum of high-quality and accessible substance abuse  
164 intervention, residential and outpatient treatment,  
165 comprehensive case management, and recovery support services for  
166 substance abuse impaired adults.

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

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

174 (g) Each pilot program region shall submit data to the

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175 department on a monthly basis that, at a minimum, reports  
176 characteristics of the participants, use of services, and such  
177 data as necessary to measure changes in participants' status  
178 with regard to housing, employment, and criminal activity.

179 (2) ELIGIBILITY AND ENROLLMENT.—

180 (a) To be eligible for participation in the pilot program,  
181 a person must:

182 1. Be 18 years of age or older with a history of chronic  
183 substance abuse or addiction.

184 2. Execute a mental health or substance abuse treatment  
185 directive as defined in s. 765.403. The directive must include a  
186 self-binding arrangement as specified in s. 765.408. In the  
187 event that an eligible participant does not have a family member  
188 or other adult available to serve as a surrogate as defined in  
189 s. 765.403, the entity under contract with the Statewide Public  
190 Guardianship Office in that region shall be appointed to serve  
191 as the surrogate.

192 3. Eligible participants shall share responsibility for the  
193 costs of pilot program services according to their ability to  
194 pay, based on a sliding fee scale.

195 (b) Maximum enrollment shall be determined by the  
196 department, based on available funding.

197 (3) SYSTEM OF CARE; CASE MANAGEMENT; PAYMENT METHOD.—

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

201 (b) The program manager is responsible for the following  
202 functions:

203 1. Network management including recruitment and retention

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204 of an adequate number of qualified service providers to ensure  
205 accessibility and quality of care;

206 2. Coordination of care, including the development and  
207 implementation of organizational structures and operational  
208 policies necessary to ensure that the network provides  
209 continuity of care and avoids unnecessary duplication of  
210 services;

211 3. Comprehensive case management, which may be provided by  
212 the program manager or by a contracted service provider,  
213 including direct interaction with participants and other  
214 activities necessary to assess, plan, implement, and monitor the  
215 needed services; and

216 4. Administrative functions for the network including, but  
217 not limited to, data management, financial management, and  
218 contract compliance.

219 (c) The department shall establish criteria for ensuring  
220 that an adequate number of providers are included in the network  
221 and for provider qualifications, which shall be specified in the  
222 contract with the program manager. The pilot program shall be  
223 limited to one network in the region for the duration of the  
224 pilot program. The provider network shall:

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

227 2. Enter into agreements with law enforcement agencies and  
228 the criminal justice system to divert nonviolent offenders with  
229 histories of serious substance abuse or chronic addiction into  
230 intensive treatment, comprehensive case management, and  
231 rehabilitation services.

232 3. Enter into an agreement with the appropriate

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233 neighborhood housing services program to provide housing  
234 assistance to eligible participants.

235 4. Enter into an agreement with the entity under contract  
236 with the Statewide Public Guardianship Office in the pilot  
237 program region to provide guardians to act in the capacity of  
238 surrogates for eligible participants who do not have family  
239 members or other adults available to perform such duties.

240 5. Enter into an agreement with the applicable nonprofit  
241 local legal services organization serving the pilot program  
242 region to provide legal assistance to eligible participants.

243 (4) SERVICES.—The network must be capable of providing, at  
244 a minimum, the following services to substance abuse impaired or  
245 drug addicted adults:

246 1. Comprehensive case management and continuum of care  
247 coordination;

248 2. Outpatient treatment services;

249 3. Crisis care, including mobile response, and  
250 detoxification in short-term residential facilities;

251 4. Inpatient treatment services;

252 5. Step-down residential treatment services;

253 6. Housing needs assessment and assistance;

254 7. Employment assistance programs;

255 8. Transportation needs assessment and assistance; and

256 9. Legal services.

257 (5) PAYMENT FOR SERVICES.—

258 (a) The general revenue funds appropriated by the  
259 legislature for the purposes of this section shall be applied to  
260 payment for services only after an eligible participant's  
261 private pay or Medicaid insurance coverage has been exhausted.

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262 (b) An eligible participant may share in the cost of  
 263 provided services based on his or her ability to pay.

264 (6) ACCOUNTABILITY; ANNUAL REPORTS.—

265 (a) By October 1 of each year, the department shall provide  
 266 a written report to the Governor, the President of the Senate,  
 267 and the Speaker of the House of Representatives which describes  
 268 the operation and effectiveness of the pilot program. The report  
 269 must include, but is not limited to, an evaluation of the impact  
 270 of the following components of the program:

- 271 1. Comprehensive case management;
- 272 2. Care coordination and followup care;
- 273 3. Housing initiatives; and
- 274 4. Employment assistance.

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

277 Section 3. Section 765.401, Florida Statutes, is  
 278 transferred and renumbered as section 765.311, Florida Statutes.

279 Section 4. Section 765.404, Florida Statutes, is  
 280 transferred and renumbered as section 765.312, Florida Statutes.

281 Section 5. The Division of Law Revision and Information is  
 282 directed to rename part IV of chapter 765, Florida Statutes, as  
 283 "Mental Health and Substance Abuse Advance Directives."

284 Section 6. Section 765.4015 is created to read:  
 285 765.4015 Short title.—Sections 765.402-765.411 may be cited  
 286 as the "Jennifer Act."

287 Section 7. Section 765.402, Florida Statutes, is created to  
 288 read:

289 765.402 Legislative findings.—

290 (1) The Legislature recognizes that an individual with

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291 capacity has the ability to control decisions relating to his or  
292 her own mental health care or substance abuse treatment. The  
293 Legislature finds that:

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

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

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

301 (d) Individuals with substance abuse impairment or mental  
302 illness need an established procedure to express their  
303 instructions and preferences for treatment and provide advance  
304 consent to or refusal of treatment. This procedure should be  
305 less expensive and less restrictive than guardianship.

306 (2) The Legislature further recognizes that:

307 (a) A mental health or substance abuse treatment advance  
308 directive must provide the individual with a full range of  
309 choices.

310 (b) For a mental health or substance abuse directive to be  
311 an effective tool, individuals must be able to choose how they  
312 want their directives to be applied, including the right of  
313 revocation, during periods of incapacity.

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

316 Section 8. Section 765.403, Florida Statutes, is created to  
317 read:

318 765.403 Definitions.—As used in this section, the term:

319 (1) "Adult" means any individual who has attained the age

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320 of majority or is an emancipated minor.

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

323 (3) "Health care facility" means a hospital, nursing home,  
324 hospice, home health agency, or health maintenance organization  
325 licensed in this state, or any facility subject to part I of  
326 chapter 394.

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

328 (a) Unable to understand the nature, character, and  
329 anticipated results of proposed treatment or alternatives or the  
330 recognized serious possible risks, complications, and  
331 anticipated benefits of treatments and alternatives, including  
332 nontreatment;

333 (b) Physically or mentally unable to communicate a willful  
334 and knowing decision about mental health care or substance abuse  
335 treatment;

336 (c) Unable to communicate his or her understanding or  
337 treatment decisions; or

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

339 (5) "Informed consent" means consent voluntarily given by a  
340 person after a sufficient explanation and disclosure of the  
341 subject matter involved to enable that person to have a general  
342 understanding of the treatment or procedure and the medically  
343 acceptable alternatives, including the substantial risks and  
344 hazards inherent in the proposed treatment or procedures or  
345 nontreatment, and to make knowing mental health care or  
346 substance abuse treatment decisions without coercion or undue  
347 influence.

348 (6) "Mental health or substance abuse treatment advance

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349 directive” means a written document in which the principal makes  
350 a declaration of instructions or preferences or appoints a  
351 surrogate to make decisions on behalf of the principal regarding  
352 the principal’s mental health or substance abuse treatment, or  
353 both.

354 (7) “Mental health professional” means a psychiatrist,  
355 psychologist, psychiatric nurse, or social worker, and such  
356 other mental health professionals licensed pursuant to chapter  
357 458, chapter 464, chapter 490, or chapter 491.

358 (8) “Principal” means a competent adult who executes a  
359 mental health or substance abuse treatment directive and on  
360 whose behalf mental health care or substance abuse treatment  
361 decisions are to be made.

362 (9) “Self-binding arrangement” means an affirmative  
363 statement, also known as a Ulysses Arrangement, contained within  
364 a mental health or substance abuse treatment directive, executed  
365 voluntarily by the principal, which allows the principal to form  
366 self-binding arrangements for mental health or substance abuse  
367 treatment as a means of ensuring early intervention and to avoid  
368 involuntary commitment. The inclusion of a self-binding  
369 arrangement is limited to directives executed by participants in  
370 a substance abuse assistance pilot program created pursuant to  
371 s. 397.803.

372 (10) “Surrogate” means any competent adult expressly  
373 designated by a principal to make mental health care or  
374 substance abuse treatment decisions on behalf of the principal  
375 as set forth in the principal’s mental health or substance abuse  
376 treatment advance directive or self-binding arrangement as those  
377 terms are defined in this section.

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379 Section 9. Section 765.405, Florida Statutes, is created to  
380 read:

381 765.405 Mental health or substance abuse treatment advance  
382 directive; execution; allowable provisions.-

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

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

389 (3) A directive may include any provision relating to  
390 mental health or substance abuse treatment or the care of the  
391 principal or the principal's personal affairs. Without  
392 limitation, a directive may include:

393 (a) The principal's preferences and instructions for mental  
394 health or substance abuse treatment.

395 (b) Consent to specific types of mental health or substance  
396 abuse treatment.

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

399 (d) Consent to admission to and retention in a facility for  
400 mental health or substance abuse treatment for up to 14 days.  
401 Such consent must be an affirmative statement contained within  
402 the directive and must clearly indicate whether such consent is  
403 revocable by the principal during a mental health or substance  
404 abuse crisis.

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

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

410 (g) Appointment of a surrogate to make mental health or  
411 substance abuse treatment decisions on the principal's behalf.  
412 In the event the directive includes a self-binding arrangement  
413 allowing the surrogate authority to consent on the principal's  
414 behalf to voluntary admission to inpatient mental health or  
415 substance abuse treatment, such authority must be clearly stated  
416 in the directive.

417 (h) The principal's nomination of a guardian, limited  
418 guardian, or guardian advocate as provided chapter 744.

419 (4) A directive may be combined with or be independent of a  
420 nomination of a guardian or other durable power of attorney.

421 Section 10. Section 765.406, Florida Statutes, is created  
422 to read:

423 765.406 Execution of a mental health or substance abuse  
424 advanced directive; effective date; expiration.-

425 (1) A directive must:

426 (a) Be in writing.

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

429 (c) Contain language that clearly indicates whether the  
430 principal intends for the surrogate to have the authority to  
431 provide consent on the principal's behalf to voluntary admission  
432 to inpatient mental health or substance abuse treatment and  
433 whether the principal's consent is revocable.

434 (d) Be dated and signed by the principal or, if the  
435 principal is unable to sign, at the principal's direction in the

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436 principal's presence.

437 (e) Be witnessed by two adults, each of whom must declare  
438 that he or she personally knows the principal and was present  
439 when the principal dated and signed the directive, and that the  
440 principal did not appear to be incapacitated or acting under  
441 fraud, undue influence, or duress. The person designated as the  
442 surrogate may not act as a witness to the execution of the  
443 document designating the mental health or substance abuse care  
444 treatment surrogate. At least one person who acts as a witness  
445 must be neither the principal's spouse nor his or her blood  
446 relative.

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

450 (3) A directive may:

451 (a) Be revoked, in whole or in part, pursuant to s.  
452 765.407; or

453 (b) Expire under its own terms.

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

455 (a) Create an entitlement to mental health, substance  
456 abuse, or medical treatment or supersede a determination of  
457 medical necessity.

458 (b) Obligate any health care provider, professional person,  
459 or health care facility to pay the costs associated with the  
460 treatment requested.

461 (c) Obligate a health care provider, professional person,  
462 or health care facility to be responsible for the nontreatment  
463 or personal care of the principal or the principal's personal  
464 affairs outside the scope of services the facility normally

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465 provides.

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

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

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

473 Section 11. Section 765.407, Florida Statutes, is created  
474 to read:

475 765.407 Revocation; waiver.-

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

479 (b) An incapacitated principal may revoke a directive only  
480 if he or she elected at the time of executing the directive to  
481 be able to revoke when incapacitated.

482 (2) The principal shall provide a copy of his or her  
483 written statement of revocation to his or her agent, if any, and  
484 to each health care provider, professional person, or health  
485 care facility that received a copy of the directive from the  
486 principal.

487 (3) The written statement of revocation is effective as to  
488 a health care provider, professional person, or health care  
489 facility upon receipt. The professional person, health care  
490 provider, or health care facility, or persons acting under their  
491 direction, shall make the statement of revocation part of the  
492 principal's medical record.

493 (4) A directive also may:

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

496 (b) Be superseded or revoked by a court order, including  
497 any order entered in a criminal matter. A directive may be  
498 superseded by a court order regardless of whether the order  
499 contains an explicit reference to the directive. A directive may  
500 not be interpreted in a manner that interferes with:

501 1. Incarceration or detention by the Department of  
502 Corrections or in a municipal or county jail; or

503 2. Treatment of a principal who is a subject to involuntary  
504 treatment pursuant to chapter 394.

505 (5) A directive that would have otherwise expired but is  
506 effective because the principal is incapacitated remains  
507 effective until the principal is no longer incapacitated unless  
508 the principal elected to be able to revoke while incapacitated  
509 and has revoked the directive.

510 (6) When a principal with capacity consents to treatment  
511 that differs from, or refuses treatment consented to in, his or  
512 her directive, the consent or refusal constitutes a waiver of a  
513 particular provision and does not constitute a revocation of the  
514 provision or the directive unless that principal also revokes  
515 the provision or directive.

516 Section 12. Section 765.408, Florida Statutes, is created  
517 to read:

518 765.408 Self-binding arrangements.—

519 (1) The Legislature finds that each competent adult has the  
520 fundamental right of self-determination regarding decisions  
521 pertaining to his or her own mental health care or substance  
522 abuse treatment decisions.

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523       (2) The Legislature further finds that the facilitation of  
524 advance planning helps:

525       (a) Prevent unnecessary involuntary commitment and  
526 incarceration;

527       (b) Improve patient safety and health; and

528       (c) Improve care and enable patients to exercise control  
529 over their treatment.

530       (3) To ensure such right is not lost or diminished, the  
531 Legislature intends that a procedure be established to allow a  
532 person to plan for episodes that compromise his or her ability  
533 to recognize his or her need for treatment before meeting  
534 involuntary commitment criteria. The principal must include a  
535 specific provision in his or her mental health and substance  
536 abuse advance directive authorizing the surrogate to direct the  
537 course of his or her mental health or substance abuse treatment.

538       (4) A principal has a right to form a self-binding  
539 arrangement for care, which allows the principal to obtain  
540 treatment in the event that an acute episode renders him or her  
541 unable to provide consent to or induces the principal to refuse  
542 treatment. Such arrangement must be affirmatively stated in the  
543 directive and include whether the principal has the right of  
544 revocation during an acute episode.

545       (5) To create an arrangement under this section, the  
546 principal must obtain a written, signed attestation of capacity  
547 from a health care professional, mental health care provider, or  
548 health care facility.

549       (6) A self-binding arrangement must:

550       (a) Be in writing.

551       (b) Be dated and signed by the principal or the principal's

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552 designated representative if the principal is unable to sign.

553 (c) State whether the principal wishes to be able to revoke  
554 the directive at any time or whether directive remains  
555 irrevocable when the principal is unable to consent to treatment  
556 or is incapacitated. Failure to clarify whether the directive is  
557 revocable does not render it unenforceable. If the directive  
558 fails to state whether it is revocable, the principal may revoke  
559 it at any time.

560 (d) Contain a clear affirmation that the principal is aware  
561 of the nature of the document signed and that the directive was  
562 signed freely and voluntarily.

563 (e) Be witnessed by at least two adults. A witness may not  
564 be:

565 1. A member of the principal's treatment team;

566 2. Related to the principal by blood, adoption, or  
567 marriage;

568 3. Be in a romantic or dating relationship with the  
569 principal;

570 4. The surrogate named by the principal in the signed  
571 directive; or

572 5. The owner, operator, or employee of, or a relative of  
573 the owner or operator of, a treatment facility in which the  
574 principal is a patient.

575 (f) Be witnessed by persons who attest that:

576 1. They were present when the principal signed the  
577 directive;

578 2. The principal did not appear incapacitated or under  
579 undue influence or duress when the principal signed the  
580 directive; and

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581 3. The principal presented identification or the witness  
582 personally knows the principal.

583 (g) If it contains a provision that the directive is  
584 irrevocable, contain a written, signed attestation from a mental  
585 health professional that the principal had capacity at the time  
586 the directive was executed. If the principal is free to revoke  
587 the directive at any time, such attestation is not required.

588 (h) Be valid upon execution.

589 (i) Contain a designated activation standard other than the  
590 principal's inability to provide consent or incapacity by  
591 describing the circumstances under which the directive becomes  
592 active.

593 (j) Affirmatively state that despite activation, a  
594 directive does not prevail over contemporaneous preferences  
595 expressed by a principal who has the ability to consent to  
596 treatment or capacity and has not included a self-binding  
597 arrangement provision in the directive.

598 (k) Appoint a surrogate to make all health care and  
599 substance abuse treatment decisions for the principal, including  
600 decisions to consent on behalf of the principal to inpatient  
601 mental health or substance abuse treatment.

602 (l) Contain a provision that decisions made by a surrogate  
603 for a principal's mental health care or substance abuse  
604 treatment are effective without judicial approval.

605 Section 13. Section 765.409, Florida Statutes, is created  
606 to read:

607 765.409 Admission to inpatient treatment; effect of  
608 directive.—

609 (1) A principal may be admitted for inpatient mental health

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610 or substance abuse treatment only if he or she:

611 (a) Chose not to be able to revoke his or her directive  
612 during any period of inability to provide consent or incapacity;

613 (b) Consented to voluntary admission to inpatient mental  
614 health or substance abuse treatment, or authorized a surrogate  
615 to consent on the principal's behalf;

616 (c) At the time of admission to inpatient treatment,  
617 refuses to be admitted; and

618 (d) The principal created an irrevocable directive that  
619 consents to treatment and which the principal is refusing under  
620 the influence of a mental health or substance abuse crisis.

621 (2) The creation of an irrevocable directive of consent to  
622 inpatient treatment creates a rebuttable presumption of  
623 incapacity.

624 (3) (a) The principal may only be admitted to, or remain in,  
625 inpatient treatment for a period of up to 14 days.

626 (b) The principal's directive must contain express consent  
627 to the administration of psychotropic medication in  
628 contravention of illness-induced objections. Such medication may  
629 be administered by licensed psychiatrists and only if two  
630 psychiatrists recommend, in writing, the specific medication.

631 (c) The principal is prohibited from authorizing  
632 psychosurgery or electroconvulsive therapy in his or her  
633 directive.

634 (d) The principal may seek injunctive relief for release  
635 from the inpatient facility.

636 Section 14. Section 765.410, Florida Statutes, is created  
637 to read:

638 765.410 Immunity from liability; weight of proof;

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639 presumption.-

640 (1) A health care facility, provider, or other person who  
641 acts under the direction of a health care facility or provider  
642 is not subject to criminal prosecution or civil liability, and  
643 may not be deemed to have engaged in unprofessional conduct, as  
644 a result of carrying out a mental health care or substance abuse  
645 treatment decision made in accordance with this section. The  
646 surrogate who makes a mental health care or substance abuse  
647 treatment decision on a principal's behalf, pursuant to this  
648 section, is not subject to criminal prosecution or civil  
649 liability for such action.

650 (2) This section applies unless it is shown by a  
651 preponderance of the evidence that the person authorizing or  
652 effectuating a mental health or substance abuse treatment  
653 decision did not, in good faith, comply with this section.

654 Section 15. Section 765.411, Florida Statutes, is created  
655 to read:

656 765.411 Recognition of mental health and substance abuse  
657 treatment advance directive executed in another state.-A mental  
658 health or substance abuse treatment advance directive executed  
659 in another state in compliance with the law of that state is  
660 validly executed for the purposes of this chapter.

661 Section 16. Paragraph (d) of subsection (1) of section  
662 395.0197, Florida Statutes, is amended to read:

663 395.0197 Internal risk management program.-

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

667 (d) A system for informing a patient or an individual

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668 identified pursuant to s. 765.311(1) ~~765.401(1)~~ that the patient  
669 was the subject of an adverse incident, as defined in subsection  
670 (5). Such notice shall be given by an appropriately trained  
671 person designated by the licensed facility as soon as  
672 practicable to allow the patient an opportunity to minimize  
673 damage or injury.

674 Section 17. Section 395.1051, Florida Statutes, is amended  
675 to read:

676 395.1051 Duty to notify patients.—An appropriately trained  
677 person designated by each licensed facility shall inform each  
678 patient, or an individual identified pursuant to s. 765.311(1)  
679 ~~765.401(1)~~, in person about adverse incidents that result in  
680 serious harm to the patient. Notification of outcomes of care  
681 that result in harm to the patient under this section shall not  
682 constitute an acknowledgment or admission of liability, nor can  
683 it be introduced as evidence.

684 Section 18. Section 456.0575, Florida Statutes, is amended  
685 to read:

686 456.0575 Duty to notify patients.—Every licensed health  
687 care practitioner shall inform each patient, or an individual  
688 identified pursuant to s. 765.311(1) ~~765.401(1)~~, in person about  
689 adverse incidents that result in serious harm to the patient.  
690 Notification of outcomes of care that result in harm to the  
691 patient under this section shall not constitute an  
692 acknowledgment of admission of liability, nor can such  
693 notifications be introduced as evidence.

694 Section 19. Subsection (15) of section 765.101, Florida  
695 Statutes, is amended to read:

696 765.101 Definitions.—As used in this chapter:

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697 (15) "Proxy" means a competent adult who has not been  
698 expressly designated to make health care decisions for a  
699 particular incapacitated individual, but who, nevertheless, is  
700 authorized pursuant to s. 765.311 ~~765.401~~ to make health care  
701 decisions for such individual.

702 Section 20. Subsection (4) of section 765.104, Florida  
703 Statutes, is amended to read:

704 765.104 Amendment or revocation.—

705 (4) Any patient for whom a medical proxy has been  
706 recognized under s. 765.311 ~~765.401~~ and for whom any previous  
707 legal disability that precluded the patient's ability to consent  
708 is removed may amend or revoke the recognition of the medical  
709 proxy and any uncompleted decision made by that proxy. The  
710 amendment or revocation takes effect when it is communicated to  
711 the proxy, the health care provider, or the health care facility  
712 in writing or, if communicated orally, in the presence of a  
713 third person.

714 Section 21. Paragraph (b) of subsection (3) of s. 394.459,  
715 subsections (6) and (7) of s. 394.4598, paragraph (d) of  
716 subsection (6) and paragraph (f) of subsection (7) of s.  
717 394.4655, paragraph (d) of subsection (6) of s. 394.467, s.  
718 394.46715, and subsection (5) of s. 765.202, Florida Statutes,  
719 are reenacted for the purpose of incorporating the amendments  
720 made to s. 394.4598, Florida Statutes.

721 Section 22. This act shall take effect July 1, 2015.