

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 12

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Senator Garcia and others

SUBJECT: Mental Health and Substance Abuse

DATE: February 22, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Recommend: Fav/CS
3.	<u>Brown</u>	<u>Kynoch</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 12 addresses Florida’s system for the delivery of behavioral health services. The bill provides for mental health services for children, parents, and others seeking custody of children involved in dependency court proceedings. The bill creates a coordinated system of care to be provided either by a community or a region for those suffering from mental illness or substance use disorder through a “No Wrong Door” system of single access points.

The Agency for Health Care Administration (AHCA) and the Department of Children and Families (DCF) are directed to modify licensure requirements to create an option for a single, consolidated license to provide both mental health and substance use disorder services. Additionally, the AHCA and the DCF are directed to develop a plan to increase federal funding for behavioral health care.

To the extent possible, the bill aligns the legal processes, timelines, and processes for assessment, evaluation, and receipt of available services of the Baker Act (mental illness) and Marchman Act (substance abuse) to assist individuals in recovery and reduce readmission to the system.

The duties and responsibilities of the DCF are revised to set performance measures and standards for managing entities¹ and to enter into contracts with the managing entities that support efficient and effective administration of the behavioral health system and ensure accountability for performance. The duties and responsibilities of managing entities are revised accordingly. Additionally, the bill would allow behavioral health organizations to be eligible to bid for managing entity contracts under certain circumstances.

The bill expands the membership of the Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee, allows not-for-profit community providers or managing entities to apply for grants, and creates a grant review and selection committee to select grant recipients.

Under the bill, Medicaid managed care plans are required to work toward integration and coordination of primary care and behavioral health services for Medicaid recipients.

A person who holds a provisional license in clinical social work, marriage and family therapy, or mental health counseling may not apply for intern registration in the same profession once the intern registration expires in five years without obtaining full licensure under the bill.

The bill has an indeterminate fiscal impact.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Mental Health and Substance Abuse

Mental illness creates enormous social and economic costs.² Unemployment rates for persons with mental disorders are high relative to the overall population.³ People with severe mental illness have exceptionally high rates of unemployment, between 60 percent and 100 percent.⁴ Mental illness increases a person's risk of homelessness in America threefold.⁵ Studies show that approximately 33 percent of our nation's homeless live with a serious mental disorder, such as schizophrenia, for which they are not receiving treatment.⁶ Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment and leads to future re-offenses.⁷

¹ See s. 394.9082, F.S. A managing entity is a not-for-profit corporation organized in Florida which is under contract with the DCF on a regional basis to manage the day-to-day operational delivery of behavioral health services through an organized system of care and a network of providers who are contracted with the managing entity to provide a comprehensive array of emergency, acute care, residential, outpatient, recovery support, and consumer support services related to behavioral health.

² Mental Illness: The Invisible Menace, *Economic Impact* <http://www.mentalmenace.com/economicimpact.php>

³ Mental Illness: The Invisible Menace, *More impacts and facts* <http://www.mentalmenace.com/impactsfacts.php>

⁴ *Id.*

⁵ Family Guidance Center, *How does Mental Illness Impact Rates of Homelessness?* (February 4, 2014) available at <http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/>

⁶ *Id.*

⁷ *Id.*

According to the National Alliance on Mental Illness (NAMI), approximately 50 percent of individuals with severe mental health disorders are affected by substance abuse.⁸ NAMI also estimates that 29 percent of all people diagnosed as mentally ill abuse alcohol or other drugs.⁹ When mental health disorders are left untreated, substance abuse is likely to increase. When substance abuse increases, mental health symptoms often increase as well or new symptoms may be triggered. This could also be due to discontinuation of taking prescribed medications or the contraindications for substance abuse and mental health medications. When taken with other medications, mental health medications can become less effective.¹⁰

Behavioral Health Managing Entities

In 2008, the Legislature required the Department of Children and Families (DCF) to implement a system of behavioral health managing entities that would serve as regional agencies to manage and pay for mental health and substance abuse services.¹¹ Prior to this time, the DCF, through its regional offices, contracted directly with behavioral health service providers. The Legislature found that a management structure that places the responsibility for publicly-financed behavioral health treatment and prevention services within a single private, nonprofit entity at the local level, would promote improved access to care, promote service continuity, and provide for more efficient and effective delivery of substance abuse and mental health services. There are currently seven managing entities across the state.¹² The managing entities are required to be not-for-profit organizations and were awarded contracts by DCF through the competitive procurement process. The current managing entity contracts were awarded for an initial five-year term with a renewal option of up to five years based on satisfactory performance. All seven managing entities contracts have been or will be renewed for five years as of July 1, 2016.¹³

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.¹⁴ The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

⁸ Donna M. White, LPCI, CACP, Psych Central.com, *Living with Co-Occurring Mental & Substance Abuse Disorders*, (October 2, 2013) available at <http://psychcentral.com/blog/archives/2013/10/02/living-with-co-occurring-mental-substance-abuse-disorders/>

⁹ *Id.*

¹⁰ *Id.*

¹¹ See s. 394.9082, F.S., as created by Chapter 2008-243, Laws of Fla.

¹² Department of Children and Families website, <http://www.myflfamilies.com/service-programs/substance-abuse/managing-entities>, (last visited Jan. 11, 2016).

¹³ Telephone discussion between DCF contract management staff and staff of the Senate Committee on Children, Families, and Elder Affairs, Feb, 19, 2016.

¹⁴ Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

Marchman Act

In 1993, the Legislature adopted the Hal S. Marchman Alcohol and Other Drug Services Act. The Marchman Act provides a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services. Services must be provided in the least restrictive environment to promote long-term recovery. The Marchman Act includes various protections and rights of patients served.

Transportation to a Facility

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.¹⁵

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.¹⁶

The Marchman Act allows law enforcement officers, however, to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to provide if necessary transfer of the detainee to an appropriate licensed service provider with an available bed.¹⁷ However, the Baker Act prohibits the detention in jail of a mentally ill person if he or she has not been charged with a crime.¹⁸

Involuntary Admission to a Facility

Criteria for Involuntary Admission

The Marchman Act provides that a person meets the criteria for involuntary admission if a good-faith reason exists to believe that the person is substance-impaired and, because of the impairment:

- Has lost the power of self-control with respect to substance abuse; and either
 - Has inflicted, threatened to or attempted to inflict self-harm; or
 - Is in need of services and due to the impairment, judgment is so impaired that the person is incapable of appreciating the need for services.¹⁹

¹⁵ Section 397.6795, F.S.

¹⁶ Section 394.462(1)(f) and (g), F.S.

¹⁷ Section 397.6772(1), F.S.

¹⁸ Section 394.459(1), F.S.

¹⁹ Section 397.675, F.S.

Protective Custody

A person who meets the criteria for involuntary admission under the Marchman Act may be taken into protective custody by a law enforcement officer.²⁰ The person may consent to have the law enforcement officer transport the person to his or her home, a hospital, or a licensed detoxification or addictions receiving facility.²¹ If the person does not consent, the law enforcement officer may transport the person without using unreasonable force.²²

Time Limits

A critical 72-hour period applies under both the Marchman Act and the Baker Act. Under the Marchman Act, a person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.²³

The Baker Act provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.²⁴ Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next working day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.²⁵

Under the Marchman Act, if the court grants the petition for involuntary admission, the person may be admitted for a period of five days to a facility for involuntary assessment and stabilization.²⁶ If the facility needs more time, the facility may request a seven-day extension from the court.²⁷ Based on the involuntary assessment, the facility may retain the person pending a court decision on a petition for involuntary treatment.²⁸

Under the Baker Act, the court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.²⁹ The petitioner must show, by clear and convincing evidence, all available less-restrictive treatment alternatives are inappropriate and that the individual:

²⁰ Section 397.677, F.S.

²¹ Section 397.6771, F.S.

²² Section 397.6772(1), F.S.

²³ Section 397.6773(1) and (2), F.S.

²⁴ Section 394.463(2)(f), F.S.

²⁵ Section 394.463(2)(i)4., F.S.

²⁶ Section 397.6811, F.S.

²⁷ Section 397.6821, F.S.

²⁸ Section 397.6822, F.S.

²⁹ Sections 394.4655(6) and 394.467(6), F.S.

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect that poses a real and present threat of substantial harm to his or her well-being, or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.³⁰

Social Work, Therapy and Counseling Interns

In Florida, an individual may register as an intern in clinical social work, marriage and family therapy, or mental health counseling. Registering as an intern enables an individual to gain the required postgraduate or post-master's clinical experience that is required for full licensure. Currently, 1,500 hours of face-to-face psychotherapy is required, which may not be accrued in fewer than 100 weeks.³¹

An applicant seeking registration as an intern must:³²

- Submit the application form and the nonrefundable fee;
- Complete the education requirements;
- Submit an acceptable supervision plan for meeting the practicum, internship, or field work required for licensure that was not satisfied by graduate studies; and
- Identify a qualified supervisor.

Currently, an intern may renew his or her registration every biennium, with no limit on the number of times a registration may be renewed.

A provisional license allows individual practice, under supervision of a licensed mental health professional, while not meeting all of the clinical experience requirements. Individuals must meet minimum coursework requirements, and possess the appropriate graduate degree. A provisional license is valid for two years.³³

Suitability Assessments for Children in the Child Welfare System

Current law provides a process for assessing a child in the legal custody of the DCF for suitability for residential mental health treatment. This assessment must be conducted by a qualified evaluator and evaluate whether the child appears to have an emotional disturbance serious enough to require treatment. The child must have the treatment explained to him or her.³⁴

³⁰ Section 394.467(1), F.S.

³¹ Rule 67B4-2.001, F.A.C.

³² Section 491.005, F.S.

³³ Section 491.0046, F.S. and Rule 64B-3.0075, F.A.C.

³⁴ Section 39.407, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 29.004, F.S., to allow courts to use state revenue to provide case management services such as service referral, monitoring, and tracking for mental health programs under s. 394, F.S.

Section 2 amends s. 39.001(6), F.S., to include mental health treatment in dependency court services and directs the state to contract with mental health service providers for such services.

Section 3 amends s. 39.407, F.S., to allow a Medicaid managed care plan that may be financially responsible for a child's placement in a residential treatment center to receive a copy of the evaluation and suitability assessment performed by a qualified evaluator.

Section 4 amends s. 39.507(10), F.S., to allow a dependency court to order a person requesting custody of a child to submit to a mental health or substance abuse disorder assessment or evaluation, require participation of such person in a mental health program or a treatment-based drug court program, and to oversee the progress and compliance with treatment by the person who has custody or is requesting custody of a child.

Section 5 amends s. 39.521(1)(b), F.S., to authorize a court, with jurisdiction of a child that has been adjudicated dependent, to require the person who has custody or is requesting custody of the child to submit to a mental illness or substance abuse disorder assessment or evaluation, to require the person to participate in and comply with the mental health program or drug court program, and to oversee the progress and compliance by the person who has custody or is requesting custody of a child.

Section 6 amends s. 394.455, F.S., to add, update, or revise definitions as appropriate.

Section 7 amends s. 394.4573, F.S., to create a coordinated system of care in the context of the No Wrong Door model which is defined as a delivery system of health care services to persons with mental health or substance abuse disorders, or both, which optimizes access to care, regardless of the entry point to the system.

The bill also defines a coordinated system of care to mean the full array of behavioral and related services in a region or community offered by all service providers, whether under contract with the managing entity or another method of community partnership or mutual agreement.

Additionally, the Department of Children and Families (DCF) is required to submit, on or before October 1 of each year, an annual assessment of the behavioral health services in the state to the Governor and the Legislature. The assessment must include comparison of the status and performance of behavioral health systems, the capacity of contracted services providers to meet estimated needs, the degree to which services are offered in the least restrictive and most appropriate therapeutic environment, and the scope of system-wide accountability activities used to monitor patient outcomes and measure continuous improvement of the behavioral health system.

The bill authorizes the DCF, subject to a specific appropriation, to award system improvement grants to managing entities based on the submission of detailed plans to enhance services, coordination of services, or a performance measurement in accordance with the No Wrong Door model. The grants must be awarded through a performance-based contract that links payments to documented and measurable system improvements.

The essential elements of a coordinated system of care under the bill must include community interventions, a designated receiving system that consists of one or more facilities serving a defined geographic area, transportation, crisis services, case management, including intensive case management, and various other services.

Section 8 amends s. 394.4597(2)(d) and (e), F.S., to specify the persons who are prohibited from being named as a patient's representative.

Section 9 amends s. 394.4598(2) through (7), F.S., to specify the persons who are prohibited from appointment as a patient's guardian advocate when a court has determined that a person is incompetent to consent to treatment but the person has not been adjudicated incapacitated. The bill also sets out the training requirements for persons appointed as guardian advocates. Public and professional guardians are not included in the exemption of persons providing substantial professional services to act as a patient's guardian advocate.

Section 10 amends s. 394.462, F.S., to direct that a transportation plan must be developed and implemented in each county or, if applicable, counties that intend to share a transportation plan. The plan must specify methods of transport to a facility within the designated receiving system and may delegate responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan must ensure that persons meeting the criteria for involuntary assessment and evaluation pursuant to s. 394.463 and 397.675 will be transported. For the transportation of a voluntary or involuntary patient to a treatment facility, the plan must specify how the hospitalized patient will be transported to, from, and between facilities.

Section 11 amends s. 394.463(2), F.S., to allow a circuit or county court to enter an ex parte order stating that a person appears to meet the criteria for involuntary examination. The ex parte order must be based on written or oral sworn testimony that includes specific facts supporting the findings. Facilities accepting patients based on ex parte orders must send a copy of the order to the managing entity in its region the next working day. A facility admitting a person for involuntary examination who is not accompanied by an ex parte order must notify the DCF and the managing entity the next working day.

The bill also adds language that a person may not be held for involuntary examination for more than 72 hours without specified actions being taken.

Section 12 amends s. 394.4655, F.S., to allow a court to order a person to involuntary outpatient services, upon a finding by clear and convincing evidence, that the person meets the criteria specified. The recommendation by the administrator of a facility of a person for involuntary outpatient services must be supported by two qualified professionals, both of whom have personally examined the person within the preceding 72 hours. A court may not order services in a proposed treatment plan which are not available. The service provider must notify the

managing entity as to the availability of the requested services, and the managing entity must document its efforts to obtain the requested services. The recommendation for involuntary outpatient services by an administrator of a facility must be supported by the opinion of two qualified professionals.

When a petition for involuntary outpatient services is filed, a hearing is held, and the court must appoint the public defender to represent the person who is the subject of the petition. The state attorney in the circuit in which the person is located shall represent the state as the real party in interest and be provided access to the person's clinical records and witnesses. The state attorney is also authorized to independently evaluate the sufficiency and appropriateness of the petition.

Section 13 amends s. 394.467, F.S., to add to the criteria for involuntary inpatient placement for mental illness the present threat of substantial physical or mental harm to a person's well-being. The bill prohibits a court from ordering an individual with traumatic brain injury or dementia who lacks a co-occurring mental illness to be involuntarily placed in a treatment facility.

When a petition for involuntary inpatient placement is filed, a hearing is held, and the court must appoint the public defender to represent the person who is the subject of the petition. The state attorney in the circuit in which the person is located shall represent the state as the real party in interest and be provided access to the person's clinical records and witnesses. The state attorney is also authorized to independently evaluate the sufficiency and appropriateness of the petition.

Section 14 amends s. 394.46715, F.S., to provide the DCF rulemaking authority.

Section 15 amends 2. 394.656, F.S., to convert the Statewide Grant Review Committee to the Statewide Grant Policy Committee. The Policy Committee will consist of the existing members of the Review Committee and will have 10 additional members. The Policy Committee will serve as the advisory body to review policy and funding issues that help reduce the impact of persons with mental illnesses and substance abuse disorders on communities. The DCF is required to create a grant review selection committee which will be responsible for evaluating grant applications and selecting recipients.

The bill authorizes the DCF to require, at its discretion, an applicant for a grant to conduct sequential intercept mapping for a project. The bill defines sequential intercept mapping as a process for reviewing a local community's mental health, substance abuse, criminal justice, and related systems and identifying points of interceptions where interventions may be made to prevent an individual with a substance use disorder or mental illness from penetrating further into the criminal justice system.

Section 16 creates s. 394.761, F.S., to direct the DCF, in coordination with the managing entities, to compile detailed documentation of the cost and reimbursements for Medicaid-covered services provided to Medicaid-eligible individuals by providers of behavioral health services that are also funded through the DCF. The DCF's documentation, along with a report of general revenue funds supporting behavioral health services that are not spent as matching funds for federal programs or otherwise required under federal regulations, must be submitted to the Agency for Health Care Administration (AHCA) by December 31, 2016. Copies of the report

must also be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives. If the report presents clear evidence that Medicaid reimbursements are less than the costs of providing the services, the AHCA and the DCF will prepare and submit any budget amendments necessary to use unmatched general revenue funds in the 2016-2017 fiscal year to draw additional federal funding to increase Medicaid funding for behavioral health service providers receiving the unmatched general revenue. Such payments must be made to providers in accordance with federal law and regulations.

Section 17 amends s. 394.875, F.S., to direct the DCF and the AHCA, by January 1, 2017, to modify licensure rules and procedures to create an option for a single, consolidated license for a provider who offers multiple types of mental health and substance abuse services regulated under chs. 394 and 397, F.S.

Section 18 amends s. 394.9082, F.S., to revise and update the duties and responsibilities of the managing entities and the DCF and to provide definitions, contracting requirements, and accountability measures.

The DCF's duties and responsibilities are revised to include the designation of facilities into the receiving system developed by one or more counties; contract with the managing entities; specify data reporting and use of shared data systems; develop strategies to divert persons with mental illness or substance abuse disorders from the criminal and juvenile justice system; support the development and implementation of a coordinated system of care to require providers receiving state funds through a direct contract with the DCF to work with the managing entity to coordinate the provision of behavioral health services; set performance measures and standards for managing entities; develop a unique identifier for clients receiving services; and coordinate procedures for referral and admission of patients to, and discharge from, state treatment facilities.

This section sets out the DCF's duties regarding its contracts with the managing entities. The contracts must support efficient and effective administration of the behavioral health system and ensure accountability for performance. The DCF must first attempt to contract with not-for-profit organizations to serve as managing entities. Under certain circumstances, the DCF may contract with a managed behavioral health organization. The DCF may continue its contract with a managing entity for up to five years, including any and all renewals and extensions, if it is determined that the managing entity has made progress toward the implementation of a coordinated system of care in its geographic region.

The revised and updated duties and responsibilities of the managing entities under the bill include conducting an assessment of community behavioral health care needs in each managing entity's geographic area. The assessment must be updated annually and include, at a minimum, information the DCF needs for its annual report to the Governor and Legislature. Managing entities must also develop local resources by pursuing third-party payments for services, applying for grants, and other methods to ensure services are available and accessible; provide assistance to counties to develop a designated receiving system and a transportation plan; enter into cooperative agreements with local homeless councils and organizations to address the homelessness of persons suffering from a behavioral health crisis; provide or contract for case management; and collaborate with local criminal and juvenile justice systems to divert persons

with mental illness or substance abuse disorders, or both, from the criminal and juvenile justice systems.

Section 19 amends s. 397.311, F.S., to create a definition for “involuntary services”, “informed consent”, and revise the definition of “qualified professional.”

Section 20 amends s. 397.675, F.S., to revise the criteria for assessment, stabilization, and involuntary treatment for persons with a substance abuse or co-occurring mental health disorder to include that without care or treatment, the person is likely to suffer from neglect or to refuse to care for himself or herself and that neglect or refusal poses a real and present threat of substantial harm to his or her well-being and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or is likely to inflict, physical harm on himself or herself, or another.

Section 21 amends s. 397.679, F.S., to expand the types of professionals who may execute a certificate for application for emergency admission of a person to a hospital or licensed detoxification facility to include a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master’s level certified addictions professional if the certification is specific to substance abuse disorders.

Section 22 amends s. 397.6791, F.S., to expand the types of professionals who may initiate a certificate for emergency assessment or admission of a person who may meet the criteria for substance abuse disorder to include a physician, an advanced registered nurse practitioner, a clinical psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed mental health counselor, a physician assistant working under the scope of practice of the supervising physician, or a master’s level certified addictions professional if the certification is specific to substance abuse disorders

Section 23 amends s. 397.6793, F.S., to revise the criteria for a person to be examined or assessed to include a reasonable belief that without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself and that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being. The professional’s certificate authorizing the involuntary admission of a person is valid for seven days after issuance.

Section 24 amends s. 397.6795, F.S., to allow a person’s spouse or guardian, or a law enforcement officer, to deliver a person named in a professional’s certificate for emergency admission to a hospital or licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization.

Section 25 amends s. 397.681, F.S., to specify that a court clerk may not charge a filing fee for the filing of a petition for involuntary assessment and stabilization.

Section 26 amends s. 397.6811(1), F.S., to allow a petition for assessment and stabilization to be filed by a person who has direct personal knowledge of a person’s substance abuse disorder.

Section 27 amends s. 397.6814, F.S., to remove the requirement that a petition for involuntary assessment and stabilization contain a statement regarding the person's ability to afford an attorney. This section also directs that a fee may not be charged for the filing of a petition pursuant to this section.

Section 28 amends s. 397.6819, F.S., to allow a licensed service provider to admit a person for a period not to exceed 5 days unless a petition for involuntary outpatient services has been initiated pending further order of the court.

Section 29 amends s. 397.695, F.S., to provide for the filing of a petition for involuntary outpatient services and the professionals that must support such a recommendation. If the person has been stabilized and no longer meets the criteria for involuntary assessment and stabilization, he or she must be released while waiting for the hearing. The service provider must prepare certain reports and a treatment plan, including certification to the court that the recommended services are available. If the services are unavailable, the petition may not be filed with the court.

Section 30 amends s. 397.6951, F.S., to amend the content requirements of the petition for involuntary outpatient services to include the person's history of failure to comply with treatment requirements, a factual allegation that the person is unlikely to voluntarily participate in the recommended services, and a factual allegation that the person is in need of the involuntary outpatient services.

Section 31 amends s. 397.6955, F.S., to update the duties of the court upon the filing of a petition for involuntary outpatient services by including the requirement to schedule a hearing within five days unless a continuance is granted.

Section 32 amends s. 397.6957, F.S., to update the requirements of the court to hear and review all relevant evidence at a hearing for involuntary outpatient services, including the requirement that the petitioner has the burden of proving by clear and convincing evidence that the respondent has a history of lack of compliance with treatment for substance abuse, is unlikely to voluntarily participate in the recommended treatment, and that, without services, is likely to suffer from neglect or to refuse to care for himself or herself. One of the qualified professionals that executed the involuntary outpatient services certificate must be a witness at the hearing.

Section 33 amends s. 397.697, F.S., to allow courts to order involuntary services when the court finds the conditions have been proven by clear and convincing evidence; however, the court cannot order involuntary services if the recommended services are not available. The bill allows for the court to order involuntary services and removes the term "outpatient" from the type of services that may be provided.

Section 34 amends s. 397.6971, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary services. The bill removes the term "outpatient" from the type of services that may be provided.

Section 35 amends s. 397.6975, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary services. The bill removes the term “outpatient” from the type of services that may be provided.

Section 36 amends s. 397.6977, F.S., to reflect the change in terminology from involuntary outpatient treatment to involuntary services. The bill removes the term “outpatient” from the type of services that may be provided.

Section 37 creates s. 397.6978, F.S., to allow for the appointment of a guardian advocate for a person determined incompetent to consent to treatment. The bill lists the persons prohibited from being appointed the patient’s guardian advocate. Public guardians and professional guardians are excluded from the persons that are exempt from appointment as an individual’s guardian advocate.

Section 38 amends s. 409.967, F.S., to direct Medicaid managed care plans to provide services in a manner that integrates behavioral health services and primary care.

Section 39 amends s. 409.973, F.S., to direct each Medicaid managed care plan to work with the managing entity in its area to enhance integration and coordination of primary care and behavioral health services for Medicaid recipients.

Section 40 amends s. 491.0045, F.S., to provide that an intern registration is valid for five years. Registrations issued on or before March 31, 2017, expire March 31, 2022 and may not be renewed or reissued. Registrations issued after March 31, 2017, expire 60 months after the date issued. Subsequent intern registrations may not be issued unless the candidate has passed the theory and practice examination.

Repeals

This bill repeals a number of obsolete and duplicative sections of statute, as follows:

- Section 394.4674, F.S., which requires the DCF to complete a deinstitutionalization plan. This section was enacted in 1980 and is obsolete following further developments in federal law.
- Section 394.4985, F.S., which requires the DCF’s regions to develop and maintain an information and referral network. This duplicates other requirements.
- Section 394.745, F.S., which requires an annual report to the Legislature of compliance of substance abuse and mental health treatment providers under contract with the DCF.
- Section 397.331, F.S., which provides definitions and legislative intent related to state drug control.
- Sections 397.6772, 397.697 and 397.801, F.S., requiring the Departments of Education, Corrections, Law Enforcement and Children and Families to each designate substance abuse impairment coordinators, and for the DCF to also designate full-time substance abuse impairment coordinators in each of its regions.
- Section 397.811, F.S., which expresses the Legislature’s intent that substance abuse prevention an early intervention programs be funded.

- Section 397.821, F.S., authorizing each judicial circuit to establish juvenile substance abuse impairment prevention and early intervention councils to identify needs. Managing entities now perform these duties.
- Section 397.901, F.S., authorizing the DCF to establish prototype juvenile addiction receiving facilities. This section was enacted in 1993 and these projects are completed.
- Section 397.93, F.S., specifying target populations for children's substance abuse services, which duplicates other statutory requirements. This duplicates other provisions of law.
- Section 397.94, F.S., requiring the DCF's regions to plan and provide for information and referral services regarding children's substance abuse services.
- Section 397.951, F.S., requiring the DCF to ensure that treatment providers use sanctions provided elsewhere in law to keep children in substance abuse treatment.
- Sections 397.97 and 397.98, F.S., relating to the Children's Network of Care Demonstration Models, authorizing their operation for four years. These were originally established in 1999.

Section 41 amends s. 39.407, F.S., to correct cross-references.

Section 42 amends s. 212.055, F.S., to correct cross-references.

Section 43 amends s. 394.4599, F.S., to correct cross-references.

Section 44 amends s. 394.495(3), F.S., to correct cross-references.

Section 45 amends s. 394.496(5), F.S., to correct cross-references.

Section 46 amends s. 394.9085(6), F.S., to correct cross-references.

Section 47 amends s. 397.321, F.S., to correct cross-references.

Section 48 amends s. 397.405(8), F.S., to correct cross-references.

Section 49 amends s. 397.407(1) and (5), F.S., to correct cross-references.

Section 50 amends s. 397.416, F.S., to correct cross-references.

Section 51 amends s. 397.4871, F.S., to correct cross-references.

Section 52 amends s. 409.966, F.S., to correct cross-references.

Section 53 amends s. 409.972(1)(b), F.S., to correct cross-references.

Section 54 amends s. 440.102(1)(d) and (g), F.S., to correct cross-references.

Section 55 amends s. 744.704(7), F.S., to correct cross-references.

Section 56 amends s. 790.065(2)(a), F.S., to correct cross-references.

Section 57 provides an effective date of July 1, 2016.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Since the bill requires a transportation plan to be developed and implemented in each county or, if applicable, in counties that intend to share a transportation plan, it falls within the purview of Section 18(a), Article VII, Florida Constitution, which provides that cities and counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. None of the exceptions apply. However, subsection (d) provides an exemption from this prohibition for laws determined to have an “insignificant fiscal impact.” The fiscal impact of this requirement is indeterminate because the number of rides needed by residents cannot be predicted. If the costs exceed the insignificant threshold, the bill will require a 2/3 vote of the membership of each house and a finding of an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

CS/SB 12 prohibits a filing fee being charged for Marchman Act petitions; however, this does not create a fiscal impact on the clerks of court or the state court system because no fees are currently assessed.³⁵

B. Private Sector Impact:

Persons appointed by the court as guardian advocates for individuals in need of behavioral health services will have increased training requirements under the bill.

Behavioral health managing entities that have made progress towards the implementation of a coordinated care system in its region may have its contract continued for no more than five years by the DCF.

Affected clinical social work, marriage and family therapist, and mental health counselor interns will have to meet new minimum qualifications for practice and will experience new requirements for supervision, which will have an indeterminate impact on their ability to practice. Intern registrations will be valid for five years but may not be renewed unless the intern has passed the applicable theory and practice examination. The affected

³⁵ E-mail received from Florida Court Clerks & Comptroller, Nov. 6, 2015, and on file in the Senate Committee on Children, Families & Elder Affairs.

interns will also be relieved of having to pay a biennial fee to renew their intern registrations but will be required to pass the applicable theory and practice examination.

C. Government Sector Impact:

State

To the extent that the bill encourages the use of involuntary outpatient services rather than inpatient placement, the state would experience a positive fiscal impact. The cost of care in state treatment facilities is more expensive than community based behavioral health care. The amount of this potential cost savings is indeterminate.

Under the bill, the DCF has revised duties to review local behavioral health care plans, write or revise rules, and award any grants for implementation of the No Wrong Door policy. Similar administrative duties are currently performed by the DCF so these revised duties are not expected to create a fiscal impact.

Local

Local governments must revise their transportation plans for acute behavioral health care under the Baker Act and Marchman Act. The bill requires that as part of the transportation plan for the No Wrong Door policy, the local government must describe how transportation will be provided between the single point of entry for behavioral health care and other treatment providers or settings as appropriate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 29.004, 39.001, 39.407, 39.507, 39.521, 394.455, 394.4573, 394.4597, 394.4598, 394.462, 394.463, 394.4655, 394.467, 394.46715, 394.656, 394.761, 394.875, 394.9082, 397.311, 397.321, 397.4871, 397.675, 397.679, 397.6791, 397.6793, 397.6795, 397.681, 397.6811, 397.6814, 397.6819, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, 397.6977, 397.6978, 39.407, 212.055, 394.4599, 394.495, 394.496, 394.9085, 397.405, 397.407, 397.416, 409.966, 409.967, 409.972, 440.102, 491.0045, 744.704, and 790.065.

This bill creates the following sections of the Florida Statutes: 394.761 and 397.6978.

This bill repeals the following sections of the Florida Statutes: 394.4674, 394.4985, 394.745, 397.331, 397.6772, 397.697, 397.801, 397.811, 397.821, 397.901, 397.93, 397.94, 397.951, 397.97, and 397.98.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on February 18, 2016:

The CS:

- Expands the membership of the Criminal Justice, Mental health, and Substance Abuse Statewide Grant Review Committee; allows not-for-profit community providers or managing entities to apply for grants; and creates a grant review and selection committee that will select grant recipients;
- Allows the state attorney to have access to clinical records and witnesses when representing the state in Baker Act hearings;
- Revises the DCF's contracting requirements for managing entities; allows managed behavioral health organizations to be eligible to bid for managing entity contracts under certain circumstances;
- Requires Medicaid managed care plans to work toward integration and coordination of primary care and behavioral health services for Medicaid recipients; and
- Requires intern registration for clinical social work, marriage and family therapists, or mental health counselors to be valid for five years, and subsequent intern registrations may not be issued unless the candidate has passed the theory and practice examination required under current law.

B. Amendments:

None.