

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Health & Human Services
 2 Committee

3 Representative Hager offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 143-795 and insert:

7 Section 2. Subsections (8) through (48) of section
 8 397.311, Florida Statutes, are renumbered as subsections (9)
 9 through (49), respectively, present subsection (41) is amended,
 10 and new subsection (8) and is added to that section, to read:

11 397.311 Definitions.—As used in this chapter, except part
 12 VIII, the term:

13 (8) "Clinical supervisor" means a person who manages
 14 personnel who provide direct clinical treatment.

15 (42)-(41)- "Service component" or "component" means a
 16 discrete operational entity within a service provider which is

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17 subject to licensing as defined by rule. Service components
18 include prevention, intervention, and clinical treatment
19 described in subsection (26)~~(25)~~.

20 Section 3. Subsection (2) of section 397.401, Florida
21 Statutes, is amended to read:

22 397.401 License required; penalty; injunction; rules
23 waivers.—

24 (2) A violation of subsection (1) is a felony ~~misdemeanor~~
25 of the third ~~first~~ degree, punishable as provided in s. 775.082,
26 ~~or~~ s. 775.083, or s. 775.084.

27 Section 4. Section 397.405, Florida Statutes, is
28 renumbered as 397.4012, Florida Statutes, and amended to read:

29 397.4012 ~~397.405~~ Exemptions from licensure.—The following
30 are exempt from the licensing provisions of this chapter:

31 (1) A hospital or hospital-based component licensed under
32 chapter 395.

33 (2) A nursing home facility as defined in s. 400.021.

34 (3) A substance abuse education program established
35 pursuant to s. 1003.42.

36 (4) A facility or institution operated by the Federal
37 Government.

38 (5) A physician or physician assistant licensed under
39 chapter 458 or chapter 459.

40 (6) A psychologist licensed under chapter 490.

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41 (7) A social worker, marriage and family therapist, or
42 mental health counselor licensed under chapter 491.

43 (8) A legally cognizable church or nonprofit religious
44 organization or denomination providing substance abuse services,
45 including prevention services, which are solely religious,
46 spiritual, or ecclesiastical in nature. A church or nonprofit
47 religious organization or denomination providing any of the
48 licensed service components itemized under s. 397.311(26)
49 397.311(25) is not exempt from substance abuse licensure but
50 retains its exemption with respect to all services which are
51 solely religious, spiritual, or ecclesiastical in nature.

52 (9) Facilities licensed under chapter 393 which, in
53 addition to providing services to persons with developmental
54 disabilities, also provide services to persons developmentally
55 at risk as a consequence of exposure to alcohol or other legal
56 or illegal drugs while in utero.

57 (10) DUI education and screening services provided
58 pursuant to ss. 316.192, 316.193, 322.095, 322.271, and 322.291.
59 Persons or entities providing treatment services must be
60 licensed under this chapter unless exempted from licensing as
61 provided in this section.

62 (11) A facility licensed under s. 394.875 as a crisis
63 stabilization unit.
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65 The exemptions from licensure in this section do not apply to
66 any service provider that receives an appropriation, grant, or
67 contract from the state to operate as a service provider as
68 defined in this chapter or to any substance abuse program
69 regulated pursuant to s. 397.4014 ~~397.406~~. Furthermore, this
70 chapter may not be construed to limit the practice of a
71 physician or physician assistant licensed under chapter 458 or
72 chapter 459, a psychologist licensed under chapter 490, a
73 psychotherapist licensed under chapter 491, or an advanced
74 registered nurse practitioner licensed under part I of chapter
75 464, who provides substance abuse treatment, so long as the
76 physician, physician assistant, psychologist, psychotherapist,
77 or advanced registered nurse practitioner does not represent to
78 the public that he or she is a licensed service provider and
79 does not provide services to individuals pursuant to part V of
80 this chapter. Failure to comply with any requirement necessary
81 to maintain an exempt status under this section is a misdemeanor
82 of the first degree, punishable as provided in s. 775.082 or s.
83 775.083.

84 Section 5. Section 397.406, Florida Statutes, is
85 renumbered as section 397.4014, Florida Statutes.

86 Section 6. Section 397.403, Florida Statutes, is amended
87 to read:

88 397.403 License application.—

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89 (1) Applicants for a license under this chapter must apply
90 to the department on forms provided by the department and in
91 accordance with rules adopted by the department. Applications
92 must include at a minimum:

93 (a) Information establishing the name and address of the
94 applicant service provider and its director, and also of each
95 member, owner, officer, and shareholder, if any.

96 (b) Information establishing the competency and ability of
97 the applicant service provider and its director to carry out the
98 requirements of this chapter.

99 (c) Proof satisfactory to the department of the applicant
100 service provider's financial ability and organizational
101 capability to operate in accordance with this chapter.

102 (d) Proof of liability insurance coverage in amounts set
103 by the department by rule.

104 (e) Sufficient information to conduct background screening
105 for all owners, directors, chief financial officers, and
106 clinical supervisors as provided in s. 397.4073 ~~397.451~~.

107 ~~1. If the results of the background screening indicate~~
108 ~~that any owner, director, or chief financial officer has been~~
109 ~~found guilty of, regardless of adjudication, or has entered a~~
110 ~~plea of nolo contendere or guilty to any offense prohibited~~
111 ~~under the screening standard, a license may not be issued to the~~
112 ~~applicant service provider unless an exemption from~~
113 ~~disqualification has been granted by the department as set forth~~

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114 ~~in chapter 435. The owner, director, or chief financial officer~~
115 ~~has 90 days within which to obtain the required exemption,~~
116 ~~during which time the applicant's license remains in effect.~~

117 ~~2. If any owner, director, or chief financial officer is~~
118 ~~arrested or found guilty of, regardless of adjudication, or has~~
119 ~~entered a plea of nolo contendere or guilty to any offense~~
120 ~~prohibited under the screening standard while acting in that~~
121 ~~capacity, the provider shall immediately remove the person from~~
122 ~~that position and shall notify the department within 2 days~~
123 ~~after such removal, excluding weekends and holidays. Failure to~~
124 ~~remove the owner, director, or chief financial officer will~~
125 ~~result in revocation of the provider's license.~~

126 (f) Proof of satisfactory fire, safety, and health
127 inspections, and compliance with local zoning ordinances.
128 Service providers operating under a regular annual license shall
129 have 18 months from the expiration date of their regular license
130 within which to meet local zoning requirements. Applicants for a
131 new license must demonstrate proof of compliance with zoning
132 requirements prior to the department issuing a probationary
133 license.

134 (g) A comprehensive outline of the proposed services,
135 including sufficient detail to evaluate compliance with clinical
136 and treatment best practices, for:

137 1. Any new applicant; or

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138 2. Any licensed service provider adding a new licensable
139 service component.

140 (h) Proof of the ability to provide services in accordance
141 with department rules.

142 (i) Any other information that the department finds
143 necessary to determine the applicant's ability to carry out its
144 duties under this chapter and applicable rules.

145 (2)-(3) The department shall accept proof of accreditation
146 by an accrediting organization whose standards incorporate
147 comparable licensure regulations required by this state, or
148 through another nationally recognized certification process that
149 is acceptable to the department and meets the minimum licensure
150 requirements under this chapter, in lieu of requiring the
151 applicant to submit the information required by paragraphs
152 (1) (a)-(c).

153 (3) Applications for licensure renewal must include proof
154 of application for accreditation for each licensed service
155 component providing clinical treatment by an accrediting
156 organization that is acceptable to the department for the first
157 renewal, and proof of accreditation for any subsequent renewals.

158 (4)-(2) The burden of proof with respect to any requirement
159 for application for licensure as a service provider under this
160 chapter is on the applicant.

161 Section 7. Subsections (5) through (10) of section
162 397.407, Florida Statutes, are renumbered as subsections (6)

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163 through (11), respectively, present subsections (1), (5), (6),
164 (7), and (11) are amended, and a new subsection (5) is added to
165 that section, to read:

166 397.407 Licensure process; fees.—

167 (1) The department shall establish the licensure process
168 to include fees and categories of licenses and must prescribe a
169 fee range that is based, at least in part, on the number and
170 complexity of programs listed in s. 397.311(26) ~~397.311(25)~~
171 which are operated by a licensee. The fees from the licensure of
172 service components are sufficient to cover ~~at least 50 percent~~
173 ~~of~~ the costs of regulating the service components. The
174 department shall specify a fee range for public and privately
175 funded licensed service providers. Fees for privately funded
176 licensed service providers must exceed the fees for publicly
177 funded licensed service providers.

178 (5) The department shall conduct background screening, as
179 provided in s. 397.4073, as part of the licensure application
180 for all owners, directors, chief financial officers, and
181 clinical supervisors. If the results of the background screening
182 indicate that the individual has been found guilty of,
183 regardless of adjudication, or has entered a plea of nolo
184 contendere or guilty to any offense prohibited under the
185 screening standard, a license may not be issued to the applicant
186 service provider unless an exemption from disqualification has
187 been granted by the department as set forth in chapter 435. The

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188 individual has 90 days within which to obtain the required
189 exemption, during which time the applicant's license remains in
190 effect.

191 ~~(6)-(5)~~ The department may issue probationary, regular, and
192 interim licenses. The department shall issue one license for
193 each service component that is operated by a service provider
194 and defined pursuant to s. 397.311(26) ~~397.311(25)~~. The license
195 is valid only for the specific service components listed for
196 each specific location identified on the license. The licensed
197 service provider shall apply for a new license at least 60 days
198 before the addition of any service components or 30 days before
199 the relocation of any of its service sites. Provision of service
200 components or delivery of services at a location not identified
201 on the license may be considered an unlicensed operation that
202 authorizes the department to seek an injunction against
203 operation as provided in s. 397.401, in addition to other
204 sanctions authorized by s. 397.415. Probationary and regular
205 licenses may be issued only after all required information has
206 been submitted. A license may not be transferred. As used in
207 this subsection, the term "transfer" includes, but is not
208 limited to, the transfer of a majority of the ownership interest
209 in the licensed entity or transfer of responsibilities under the
210 license to another entity by contractual arrangement.

211 ~~(7)-(6)~~ Upon receipt of a complete application, payment of
212 applicable fees, and a demonstration of substantial compliance

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213 with all applicable statutory and regulatory requirements, the
214 department may issue a probationary license ~~may be issued to a~~
215 ~~service provider applicant~~ with ~~in the initial stages of~~
216 ~~developing~~ services that are not yet fully operational. The
217 department may not issue a probationary license when doing so
218 would place the health, safety, or welfare of individuals at
219 risk upon completion of all application requirements itemized in
220 s. 397.403(1) and upon demonstration of the applicant's ability
221 to comply with all applicable statutory and regulatory
222 requirements. A probationary license expires 90 days after
223 issuance and may not be reissued ~~once for an additional 90-day~~
224 ~~period if the applicant has substantially complied with all~~
225 ~~requirements for regular licensure or has initiated action to~~
226 ~~satisfy all requirements.~~ During the probationary period the
227 department shall monitor the delivery of services.

228 Notwithstanding s. 120.60(5), the department may order a
229 probationary licensee to cease and desist operations at any time
230 it is found to be substantially out of compliance with licensure
231 standards. This cease-and-desist order is exempt from the
232 requirements of s. 120.60(6).

233 ~~(8)-(7)~~ A regular license may be issued to:

234 (a) A new applicant at the end of the probationary period.

235 (b) A licensed applicant that holds a regular license and
236 is seeking renewal.

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237 (c) An applicant for a service component operating under
238 an interim license upon successful satisfaction of the
239 requirements for a regular license.

240
241 In order to be issued a regular license, the applicant must be
242 in compliance with statutory and regulatory requirements. An
243 application for renewal of a regular license must be submitted
244 to the department at least 60 days before the license expires.
245 The department may deny a renewal application submitted fewer
246 than 30 days before the license expires.

247 ~~(11) Effective July 1, 2016, a service provider licensed~~
248 ~~under this part may not refer a current or discharged patient to~~
249 ~~a recovery residence unless the recovery residence holds a valid~~
250 ~~certificate of compliance as provided in s. 397.487 and is~~
251 ~~actively managed by a certified recovery residence administrator~~
252 ~~as provided in s. 397.4871 or the recovery residence is owned~~
253 ~~and operated by a licensed service provider or a licensed~~
254 ~~service provider's wholly owned subsidiary. For purposes of this~~
255 ~~subsection, the term "refer" means to inform a patient by any~~
256 ~~means about the name, address, or other details of the recovery~~
257 ~~residence. However, this subsection does not require a licensed~~
258 ~~service provider to refer any patient to a recovery residence.~~

259 Section 8. Section 397.451, Florida Statutes, is
260 renumbered as section 397.4073, Florida Statutes, and paragraph

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261 (a) of subsection (1), subsection (2), and paragraph (b) of
262 subsection (3) of that section are amended to read:

263 397.4073 ~~397.451~~ Background checks of service provider
264 personnel.—

265 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND
266 EXCEPTIONS.—

267 (a) Background checks shall apply as follows:

268 1. All owners, directors, and chief financial officers,
269 and clinical supervisors of service providers are subject to
270 level 2 background screening as provided under chapter 435.
271 Inmate substance abuse programs operated directly or under
272 contract with the Department of Corrections are exempt from this
273 requirement.

274 2. All service provider personnel who have direct contact
275 with children receiving services or with adults who are
276 developmentally disabled receiving services are subject to level
277 2 background screening as provided under chapter 435.

278 (2) EMPLOYMENT HISTORY CHECKS; CHECKS OF REFERENCES.—The
279 department shall assess employment history checks and checks of
280 references for all owners, directors, and chief financial
281 officers, and the directors and clinical supervisors shall
282 assess employment history checks and checks of references for
283 each employee who has direct contact with children receiving
284 services or adults who are developmentally disabled receiving
285 services.

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286 (3) PERSONNEL EXEMPT FROM BEING REFINGERPRINTED OR
287 RECHECKED.—

288 (b) Service provider owners, directors, or chief financial
289 officers, or clinical supervisors who are not covered by
290 paragraph (a) who provide proof of compliance with the level 2
291 background screening requirements which has been submitted
292 within the previous 5 years in compliance with any other state
293 health care licensure requirements are not required to be
294 refingerprinted or rechecked.

295 Section 9. Section 397.461, Florida Statutes, is
296 renumbered as section 397.4075, Florida Statutes.

297 Section 10. Section 397.410, Florida Statutes, is created
298 to read:

299 397.410 Licensure requirements; minimum standards; rules.—

300 (1) The department shall establish minimum requirements
301 for licensure of each licensed service component, as defined in
302 s. 397.311(26), including, but not limited to:

303 (a) Standards and procedures for the administrative
304 management of the licensed service component, including
305 procedures for recordkeeping, referrals, and financial
306 management.

307 (b) Standards consistent with clinical and treatment best
308 practices that ensure the provision of quality treatment for
309 individuals receiving substance abuse treatment services.

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310 (c) The number and qualifications of all personnel,
311 including, but not limited to, management, nursing, and
312 qualified professionals, having responsibility for any part of
313 an individual's clinical treatment. These requirements must
314 include, but are not limited to:

315 1. Education; credentials, such as licensure or
316 certification, if appropriate; training; and supervision of
317 personnel providing direct clinical treatment.

318 2. Minimum staffing ratios to provide adequate safety,
319 care, and treatment.

320 3. Hours of staff coverage.

321 4. The maximum number of individuals who may receive
322 clinical services together in a group setting.

323 5. The maximum number of licensed service providers for
324 which a physician may serve as medical director and the total
325 number of individuals he or she may treat in that capacity.

326 (d) Service provider facility standards, including, but
327 not limited to:

328 1. Safety and adequacy of the facility and grounds.

329 2. Space, furnishings, and equipment for each individual
330 served.

331 3. Infection control, housekeeping, sanitation, and
332 facility maintenance.

333 4. Meals and snacks.

334 (e) Disaster planning policies and procedures.

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335 (2) The department shall adopt rules to provide that, if
336 the criteria established under subsection (1) are not met, such
337 deficiencies shall be classified according to the nature and the
338 scope of the deficiency. The scope shall be cited as isolated,
339 patterned, or widespread. The department shall indicate the
340 classification on the face of the notice of deficiencies in
341 accordance with s. 397.411.

342 (a) An isolated deficiency is a deficiency affecting one
343 or a very limited number of individuals or involving one or a
344 very limited number of staff, or a situation that occurred only
345 occasionally or in a very limited number of locations.

346 (b) A patterned deficiency is a deficiency where more than
347 a very limited number of individuals are affected or more than a
348 very limited number of staff are involved, the situation has
349 occurred in several locations, or the same individual or
350 individuals have been affected by repeated occurrences of the
351 same deficient practice but the effect of the deficient practice
352 is not found to be pervasive throughout the facility.

353 (c) A widespread deficiency is a deficiency in which the
354 problems causing the deficiency are pervasive throughout the
355 facility or represent systemic failure that has affected or has
356 the potential to affect a large portion of individuals.

357 (3) By October 1, 2017, the department shall publish a
358 notice of development of rulemaking, and by January 1, 2018, the

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359 department shall publish a notice of proposed rule pursuant to s
360 120.54(3) (a) to implement the provisions of this section.

361 (4) The department shall provide a report to the Governor,
362 President of the Senate, and Speaker of the House of
363 Representatives by December 1, 2020, about the appropriateness
364 of licensure requirements for qualifications of personnel
365 providing direct clinical treatment. The report shall include
366 but not be limited to the requirements established in rule, the
367 number and nature of complaints received regarding personnel
368 providing direct clinical treatment and about the qualifications
369 of the individuals subject to the complaints, and the
370 precipitating cause, number and types of licensure actions taken
371 by the department regarding such personnel.

372 Section 11. Section 397.419, Florida Statutes, is
373 renumbered as section 397.4103, Florida Statutes.

374 Section 12. Paragraph (a) of subsection (1) and subsection
375 (4) of section 397.411, Florida Statutes, are amended, and
376 subsection (7) is added to that section, to read:

377 397.411 Inspection; right of entry; classification of
378 violations; records.—

379 (1) (a) An authorized agent of the department may conduct
380 announced or unannounced inspections, ~~enter and inspect~~ at any
381 time, of a licensed service provider to determine whether it is
382 in compliance with statutory and regulatory requirements,

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383 including, but not limited to, the minimum requirements for
384 licensure in s. 397.410.

385 (4) The authorized agents of the department may ~~shall~~
386 schedule periodic inspections of licensed service providers in
387 order to minimize costs and the disruption of services; however,
388 such authorized agents may inspect the facilities of any
389 licensed service provider at any time.

390 (7) Violations of this part or applicable rules shall be
391 classified according to the nature of the violation and the
392 gravity of its probable effect on an individual receiving
393 substance abuse treatment. Violations shall be classified on the
394 written notice as follows:

395 (a) Class "I" violations are those conditions or
396 occurrences related to the operation and maintenance of a
397 service component or to the treatment of an individual which the
398 department determines present an imminent danger or a
399 substantial probability that death or serious physical or
400 emotional harm would result therefrom. The condition or practice
401 constituting a class I violation shall be abated or eliminated
402 within 24 hours, unless a fixed period, as determined by the
403 department, is required for correction. The department shall
404 impose an administrative fine as provided by law for a cited
405 class I violation. A fine shall be levied notwithstanding the
406 correction of the violation.

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407 (b) Class "II" violations are those conditions or
408 occurrences related to the operation and maintenance of a
409 service component or to the treatment of an individual which the
410 department determines directly threaten the physical or
411 emotional health, safety, or security of the individual, other
412 than class I violations. The department shall impose an
413 administrative fine as provided by law for a cited class II
414 violation. A fine shall be levied notwithstanding the correction
415 of the violation.

416 (c) Class "III" violations are those conditions or
417 occurrences related to the operation and maintenance of a
418 service component or to the treatment of an individual which the
419 department determines indirectly or potentially threaten the
420 physical or emotional health, safety, or security of the
421 individual, other than class I or class II violations. The
422 department shall impose an administrative fine as provided in
423 this section for a cited class III violation. A citation for a
424 class III violation must specify the time within which the
425 violation is required to be corrected. If a class III violation
426 is corrected within the time specified, a fine may not be
427 imposed.

428 (d) Class "IV" violations are those conditions or
429 occurrences related to the operation and maintenance of a
430 service component or to required reports, forms, or documents
431 that do not have the potential of negatively affecting an

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432 individual. These violations are of a type that the department
433 determines do not threaten the health, safety, or security of an
434 individual. The department shall impose an administrative fine
435 as provided in this section for a cited class IV violation. A
436 citation for a class IV violation must specify the time within
437 which the violation is required to be corrected. If a class IV
438 violation is corrected within the time specified, a fine may not
439 be imposed.

440 Section 13. Subsection (1) of section 397.415, Florida
441 Statutes, is amended to read:

442 397.415 Denial, suspension, and revocation; other
443 remedies.—

444 (1) If the department determines that an applicant or
445 licensed service provider or licensed service component thereof
446 is not in compliance with all statutory and regulatory
447 requirements, the department may deny, suspend, revoke, or
448 impose reasonable restrictions or penalties on the license or
449 any portion of the license. In such case, ~~the department:~~

450 (a) The department may:

451 1. Impose an administrative fine for a violation that is
452 designated as a class I, class II, class III, or class IV
453 violation pursuant to s. 397.411.

454 2. Impose an administrative fine for a violation that is
455 not designated as a class I, class II, class III, or class IV
456 violation pursuant to s. 397.411. Unless otherwise specified by

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457 law, the amount of the fine may not exceed \$500 for each
458 violation. Unclassified violations may include:
459 a. Violating any term or condition of a license.
460 b. Violating any provision of this chapter or applicable
461 rules.
462 c. Providing services beyond the scope of the license.
463 d. Violating a moratorium imposed pursuant to s. 397.415.
464 3. Establish criteria by rule for the amount or aggregate
465 limitation of administrative fines applicable to this chapter
466 and applicable rules, unless the amount or aggregate limitation
467 of the fine is prescribed by statute. Each day of violation
468 constitutes a separate violation and is subject to a separate
469 fine. For fines imposed by final order of the department and not
470 subject to further appeal, the violator shall pay the fine plus
471 interest at the rate specified in s. 55.03 for each day beyond
472 the date set by the department for payment of the fine.
473 (b) The department may require a corrective action plan
474 approved by the department for any violation of this part or
475 applicable rules.
476 (c) The department may impose an immediate moratorium or
477 emergency suspension as defined in s. 120.60 ~~a moratorium~~ on
478 admissions to any service component of a licensed service
479 provider if the department determines that conditions present
480 are a threat to the ~~public~~ health, ~~or~~ safety, or welfare of an
481 individual or the public. Notice of the moratorium or emergency

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482 suspension shall be posted and visible to the public at the
483 location of the provider until the action is lifted.

484 ~~(b) May impose an administrative penalty of up to \$500 per~~
485 ~~day against a licensed service provider operating in violation~~
486 ~~of any fire-related, safety-related, or health-related statutory~~
487 ~~or regulatory requirement. Fines collected under this paragraph~~
488 ~~must be deposited in the Operations and Maintenance Trust Fund.~~

489 (d)(e) The department may deny, suspend, or revoke the
490 license of a service provider or may suspend or revoke the
491 license as to the operation of any service component or location
492 identified on the license for:

493 1. False representation of a material fact in the license
494 application or omission of any material fact from the
495 application.

496 2. An intentional or negligent act materially affecting
497 the health or safety of an individual receiving services from
498 the provider.

499 3. A violation of this chapter or applicable rules.

500 4. A demonstrated pattern of deficient performance.

501 5. Failure to immediately remove service provider
502 personnel subject to background screening pursuant to s.
503 397.4073 who are arrested or found guilty of, regardless of
504 adjudication, or have entered a plea of nolo contendere or
505 guilty to any offense prohibited under the screening standard
506 and notify the department within 2 days after such removal,

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507 ~~excluding weekends and holidays if, after notice, the department~~
508 ~~determines that a service provider has failed to correct the~~
509 ~~substantial or chronic violation of any statutory or regulatory~~
510 ~~requirement that impacts the quality of care.~~

511 Section 14. Section 397.471, Florida Statutes, is
512 repealed.

513 Section 15. Section 397.4873, Florida Statutes, is created
514 to read:

515 397.4873 Referrals to or from recovery residences;
516 prohibitions; penalties.-

517 (1) A service provider licensed under this part may not
518 make a referral of a prospective, current, or discharged patient
519 to, or accept a referral of such a patient from, a recovery
520 residence unless the recovery residence holds a valid
521 certificate of compliance as provided in s. 397.487 and is
522 actively managed by a certified recovery residence administrator
523 as provided in s. 397.4871.

524 (2) Subsection (1) does not apply to:

525 (a) A licensed service provider under contract with a
526 managing entity, as defined in s. 394.9082.

527 (b) Referrals by a recovery residence to a licensed service
528 provider when the recovery residence or its owners, directors,
529 operators, or employees do not benefit, directly or indirectly,
530 from the referral.

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531 (c) Referrals made prior to January 1, 2018, by a licensed
532 service provider to that licensed service provider's wholly
533 owned subsidiary.

534 (3) For purposes of this section, a licensed service
535 provider or recovery residence shall be considered to have made
536 a referral if the provider or recovery residence has informed a
537 patient by any means about the name, address, or other details
538 of a recovery residence or licensed service provider, or
539 informed a licensed service provider or a recovery residence of
540 any identifying details about a patient.

541 (4) A licensed service provider shall maintain records of
542 referrals to or from recovery residences as may be prescribed by
543 the department in rule.

544 (5) After June 30, 2019, licensed service providers
545 violating this section shall be subject to an administrative
546 fine of \$1,000 per occurrence. Repeat violations of this section
547 may subject a provider to license suspension or revocation
548 pursuant to s. 397.415.

549 (6) Nothing in this section requires a licensed service
550 provider to refer any patient to or to accept a referral of a
551 patient from a recovery residence.

552 Section 16. Paragraphs (g) and (h) of subsection (7) of
553 section 397.501, Florida Statutes, are amended to read:

554 397.501 Rights of individuals.—Individuals receiving
555 substance abuse services from any service provider are

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556 guaranteed protection of the rights specified in this section,
557 unless otherwise expressly provided, and service providers must
558 ensure the protection of such rights.

559 (7) RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.—

560 (g) An order authorizing the disclosure of an individual's
561 records may be applied for by any person having a legally
562 recognized interest in the disclosure which is sought. The
563 application may be filed alone ~~separately~~ or as part of a
564 pending civil action or an active criminal investigation in
565 which it appears that the individual's records are needed to
566 provide evidence. An application must use a fictitious name,
567 such as John Doe or Jane Doe, to refer to any individual and may
568 not contain or otherwise disclose any identifying information
569 unless the individual is the applicant or has given a written
570 consent to disclosure or the court has ordered the record of the
571 proceeding sealed from public scrutiny.

572 (h)1. For applications filed alone or as part of a pending
573 civil action, the individual and the person holding the records
574 from whom disclosure is sought must be given adequate notice in
575 a manner which will not disclose identifying information to
576 other persons, and an opportunity to file a written response to
577 the application, or to appear in person, for the limited purpose
578 of providing evidence on the statutory and regulatory criteria
579 for the issuance of the court order.

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580 2. Applications filed as part of an active criminal
581 investigation may, in the discretion of the court, be granted
582 without notice. Although no express notice is required to the
583 agents, owners, and employees of the treatment provider or to
584 any individual whose records are to be disclosed, upon
585 implementation of an order so granted, any of these persons must
586 be afforded an opportunity to seek revocation or amendment of
587 the order, limited to the presentation of evidence on the
588 statutory and regulatory criteria for the issuance of the order.

589 Section 17. Section 397.55, Florida Statutes, is created
590 to read:

591 397.55 Prohibition of deceptive marketing practices.—

592 (1) The Legislature recognizes that consumers of substance
593 abuse treatment have disabling conditions and that such
594 consumers and their families are vulnerable and at risk of being
595 easily victimized by fraudulent marketing practices that
596 adversely impact the delivery of health care. To protect the
597 health, safety, and welfare of this vulnerable population, a
598 service provider, an operator of a recovery residence, or a
599 third party who provides any form of advertising or marketing
600 services to a service provider or an operator of a recovery
601 residence may not engage in any of the following marketing
602 practices:

603 (a) Making a false or misleading statement or providing
604 false or misleading information about the provider's or

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605 operator's or third party's products, goods, services, or
606 geographical locations in its marketing, advertising materials,
607 or media or on its website.

608 (b) Including on its website false information or
609 electronic links, coding, or activation that provides false
610 information or that surreptitiously directs the reader to
611 another website.

612 (c) Conduct prohibited by s. 817.505.

613 (d) Entering into a contract with a marketing provider who
614 agrees to generate referrals or leads for the placement of
615 patients with a service provider or in a recovery residence
616 through a call center or a web-based presence, unless the
617 service provider or the operator of the recovery residence
618 discloses the following to the prospective patient so that the
619 patient can make an informed health care decision:

620 1. Information about the specific licensed service
621 providers or recovery residences that are represented by the
622 marketing provider and pay a fee to the marketing provider,
623 including the identity of such service providers or recovery
624 residences; and

625 2. Clear and concise instructions that allow the
626 prospective patient to easily access lists of licensed service
627 providers and recovery residences on the department website.

628 (2) In addition to any other punishment authorized by law,
629 a person or entity that knowingly and willfully violates

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630 paragraph (1)(a), paragraph (1)(b), or paragraph (1)(d) commits
631 a misdemeanor of the first degree, punishable as provided in s.
632 775.082 or s. 775.083. A violation of paragraph (1)(c) is a
633 violation of the prohibition on patient brokering and may
634 subject the party committing the violation to criminal penalties
635 under s. 817.505.

636 Section 18. Subsections (1), (2) and (5) of section
637 501.605, Florida Statutes, are amended to read:

638 501.605 Licensure of commercial telephone sellers and
639 entities providing substance abuse marketing services.-

640 (1) Prior to doing business in this state, a commercial
641 telephone seller, or an entity providing substance abuse
642 marketing services pursuant to s. 397.55, shall obtain a license
643 from the department. Doing business in this state includes
644 either telephone solicitation from a location in Florida or
645 solicitation from other states or nations of purchasers located
646 in Florida.

647 (2) An applicant for a license as a commercial telephone
648 seller or entity providing substance abuse marketing services
649 must submit to the department, in such form as it prescribes, a
650 written application for the license. The application must set
651 forth the following information:

652 (a) The true name, date of birth, driver license number or
653 other valid form of identification, and home address of the

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654 applicant, including each name under which he or she intends to
655 do business.

656 (b) Each business or occupation engaged in by the
657 applicant during the 3 years immediately preceding the date of
658 the application, and the location thereof.

659 (c) The previous experience of the applicant as a
660 commercial telephone seller or salesperson or entity providing
661 substance abuse marketing services.

662 (d) Whether the applicant has previously been arrested
663 for, convicted of, or is under indictment or information for, a
664 felony and, if so, the nature of the felony. Conviction includes
665 a finding of guilt where adjudication has been withheld.

666 (e) Whether the applicant has previously been convicted
667 of, or is under indictment or information for, racketeering or
668 any offense involving fraud, theft, embezzlement, fraudulent
669 conversion, or misappropriation of property. Conviction includes
670 a finding of guilt where adjudication has been withheld.

671 (f) Whether there has ever been a judicial or
672 administrative finding that the applicant has previously been
673 convicted of acting as a salesperson without a license, or
674 whether such a license has previously been refused, revoked, or
675 suspended in any jurisdiction.

676 (g) Whether the applicant has worked for, or been
677 affiliated with, a company that has had entered against it an
678 injunction, a temporary restraining order, or a final judgment

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679 or order, including a stipulated judgment or order, an assurance
680 of voluntary compliance, or any similar document, in any civil
681 or administrative action involving racketeering, fraud, theft,
682 embezzlement, fraudulent conversion, or misappropriation of
683 property or the use of any untrue, deceptive, or misleading
684 representation or the use of any unfair, unlawful, or deceptive
685 trade practice.

686 (h) Whether the applicant has had entered against him or
687 her an injunction, a temporary restraining order, or a final
688 judgment or order, including a stipulated judgment or order, an
689 assurance of voluntary compliance, or any similar document, in
690 any civil or administrative action involving racketeering,
691 fraud, theft, embezzlement, fraudulent conversion, or
692 misappropriation of property or the use of any untrue,
693 deceptive, or misleading representation or the use of any
694 unfair, unlawful, or deceptive trade practice; and whether or
695 not there is any litigation pending against the applicant.

696 (i) The name of any parent or affiliated entity that:

- 697 1. Will engage in a business transaction with the
698 purchaser relating to any sale solicited by the applicant; or
699 2. Accepts responsibility or is otherwise held out by the
700 applicant as being responsible for any statement or act of the
701 applicant relating to any sale solicited by the applicant.

702 (j) The complete street address of each location,
703 designating the principal location, from which the applicant

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704 will be doing business. The street address may not be a mail
705 drop.

706 (k) A list of all telephone numbers to be used by the
707 applicant, with the address where each telephone using these
708 numbers will be located.

709 (1) The true name, current home address, date of birth,
710 and all other names by which known, or previously known, of
711 each:

712 1. Principal officer, director, trustee, shareholder,
713 owner, or partner of the applicant, and of each other person
714 responsible for the management of the business of the applicant.

715 2. Office manager or other person principally responsible
716 for a location from which the applicant will do business.

717 3. Salesperson or other person to be employed by the
718 applicant.

719

720 The application shall be accompanied by a copy of any: Script,
721 outline, or presentation the applicant will require or suggest a
722 salesperson to use when soliciting, or, if no such document is
723 used, a statement to that effect; sales information or
724 literature to be provided by the applicant to a salesperson; and
725 sales information or literature to be provided by the applicant
726 to a purchaser in connection with any solicitation.

727 (5) An application filed pursuant to this part must be
728 verified and accompanied by:

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729 (a) A bond, letter of credit, or certificate of deposit
730 satisfying the requirements of s. 501.611. An entity providing
731 substance abuse marketing services pursuant to s. 397.55 is
732 exempt from this requirement.

733 (b) A fee for licensing in the amount of \$1,500. The fee
734 shall be deposited into the General Inspection Trust Fund. The
735 department shall waive the initial license fee for an honorably
736 discharged veteran of the United States Armed Forces, the spouse
737 of such a veteran, or a business entity that has a majority
738 ownership held by such a veteran or spouse if the department
739 receives an application, in a format prescribed by the
740 department, within 60 months after the date of the veteran's
741 discharge from any branch of the United States Armed Forces. To
742 qualify for the waiver, a veteran must provide to the department
743 a copy of his or her DD Form 214, as issued by the United States
744 Department of Defense, or another acceptable form of
745 identification as specified by the Department of Veterans'
746 Affairs; the spouse of a veteran must provide to the department
747 a copy of the veteran's DD Form 214, as issued by the United
748 States Department of Defense, or another acceptable form of
749 identification as specified by the Department of Veterans'
750 Affairs, and a copy of a valid marriage license or certificate
751 verifying that he or she was lawfully married to the veteran at
752 the time of discharge; or a business entity must provide to the
753 department proof that a veteran or the spouse of a veteran holds

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754 a majority ownership in the business, a copy of the veteran's DD
755 Form 214, as issued by the United States Department of Defense,
756 or another acceptable form of identification as specified by the
757 Department of Veterans' Affairs, and, if applicable, a copy of a
758 valid marriage license or certificate verifying that the spouse
759 of the veteran was lawfully married to the veteran at the time
760 of discharge.

761 Section 19. Subsection (1) of section 501.606, Florida
762 Statutes, is amended to read:

763 501.606 Disclosures required of commercial telephone
764 sellers and entities providing substance abuse marketing
765 services.—

766 (1) With respect to any person identified pursuant to s.
767 501.605, an applicant for a license as a commercial telephone
768 seller or entity providing substance abuse marketing services
769 must state in his or her application the identity of any
770 affiliated commercial seller or salesperson who:

771 (a) Has been convicted of, or is under indictment or
772 information for, racketeering or any offense involving fraud,
773 theft, embezzlement, fraudulent conversion, or misappropriation
774 of property. Conviction includes a finding of guilt where
775 adjudication has been withheld;

776 (b) Is involved in pending litigation or has had entered
777 against him or her an injunction, a temporary restraining order,
778 or a final judgment or order, including a stipulated judgment or

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779 order, an assurance of voluntary compliance, or any similar
780 document, in any civil or administrative action involving
781 racketeering, fraud, theft, embezzlement, fraudulent conversion,
782 or misappropriation of property or the use of any untrue,
783 deceptive, or misleading representation or the use of any
784 unfair, unlawful, or deceptive trade practice;

785 (c) Is, or ever has been, subject to any litigation,
786 injunction, temporary restraining order, or final judgment or
787 order, including a stipulated judgment or order, an assurance of
788 voluntary compliance, or any similar document or any restrictive
789 court order relating to a business activity as the result of any
790 action brought by a governmental agency, including any action
791 affecting any license to do business or practice an occupation
792 or trade;

793 (d) Has at any time during the previous 7 years filed for
794 bankruptcy, been adjudged bankrupt, or been reorganized because
795 of insolvency; or

796 (e) Has been a principal, director, officer, or trustee
797 of, or a general or limited partner in, or had responsibilities
798 as a manager in, any corporation, partnership, joint venture, or
799 other entity that filed for bankruptcy, was adjudged bankrupt,
800 or was reorganized because of insolvency within 1 year after the
801 person held that position. The disclosures required in paragraph

802 (d) shall be applicable insofar as they relate to the applicant
803 ~~commercial telephone seller~~, as well as any affiliate affiliated

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804 ~~commercial seller~~ or salesperson.

805 Section 20. Subsections (3) and (4) of section 501.608,
806 Florida Statutes, are amended to read:

807 501.608 License or affidavit of exemption; occupational
808 license.—

809 (3) Failure to obtain or display a license or a receipt of
810 filing of an affidavit of exemption is sufficient grounds for
811 the department to issue an immediate cease and desist order,
812 which shall act as an immediate final order under s.

813 120.569(2)(n). The order shall remain in effect until the
814 commercial telephone seller, entity providing substance abuse
815 marketing services, or a person claiming to be exempt shows the
816 authorities that he or she is properly licensed or exempt. The
817 department may order the business to cease operations and shall
818 order the phones to be shut off. Failure of a salesperson to
819 display a license or a receipt of filing of an affidavit of
820 exemption may result in the salesperson being summarily ordered
821 by the department to leave the office until he or she can
822 produce a license or a receipt of filing of an affidavit of
823 exemption for the department.

824 (4) Any person applying for or renewing a local
825 occupational license to engage in business as a commercial
826 telephone seller or entity providing substance abuse marketing
827 services must exhibit an active license or a copy of the

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828 affidavit of exemption before the local occupational license may
829 be issued or reissued.

830 Section 21. Paragraphs (a) and (g) of subsection (1) of
831 section 501.612, Florida Statutes, are amended to read:

832 501.612 Grounds for departmental action against licensure
833 applicants or licensees.—

834 (1) The department may enter an order directing that one
835 or more of the actions set forth in subsection (2) be taken if
836 the department finds that a commercial telephone seller or
837 salesperson, or entity providing substance abuse marketing
838 services, or any person applying for licensure as a commercial
839 telephone seller or salesperson or entity providing substance
840 abuse marketing services, including, but not limited to, owners,
841 operators, officers, directors, partners, or other individuals
842 engaged in the management activities of a business entity:

843 (a) Has, regardless of adjudication, been convicted or
844 found guilty of, or has entered a plea of guilty or a plea of
845 nolo contendere to, racketeering or any offense involving fraud,
846 theft, embezzlement, fraudulent conversion, or misappropriation
847 of property, or any other crime involving moral turpitude;

848 (g) Has been previously convicted of or found to have been
849 acting as a salesperson or commercial telephone seller, or
850 entity providing substance abuse marketing services, without a
851 license or whose licensure has previously been refused, revoked,
852 or suspended in any jurisdiction;

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853 Section 22. Section 501.618, Florida Statutes, is amended
854 to read:

855 501.618 General civil remedies.—The department may bring:

856 (1) An action to obtain a declaratory judgment that an act
857 or practice violates the provisions of this part.

858 (2) An action to enjoin a person who has violated, is
859 violating, or is otherwise likely to violate the provisions of
860 this part.

861 (3) An action on behalf of one or more purchasers for the
862 actual damages caused by an act or practice performed in
863 violation of the provisions of this part. Such an action may
864 include, but is not limited to, an action to recover against a
865 bond, letter of credit, or certificate of deposit as otherwise
866 provided in this part.

867

868 Upon motion of the enforcing authority in any action brought
869 under this section, the court may make appropriate orders,
870 including appointment of a general or special magistrate or
871 receiver or sequestration of assets, to reimburse consumers
872 found to have been damaged, to carry out a consumer transaction
873 in accordance with the consumer's reasonable expectations, or to
874 grant other appropriate relief. The court may assess the
875 expenses of a general or special magistrate or receiver against
876 a commercial telephone seller or entity providing substance
877 abuse marketing services. Any injunctive order, whether

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878 temporary or permanent, issued by the court shall be effective
879 throughout the state unless otherwise provided in the order.

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

883

Remove lines 8-65 and insert:

884

term "clinical supervisor"; conforming a cross-reference;

885

amending s. 397.401, F.S.; increasing penalties for operating

886

without a license; renumbering and amending s. 397.405, F.S.;

887

conforming a cross-reference; amending s. 397.403, F.S.;

888

requiring additional information to be provided in a licensure

889

application; requiring accreditation for certain licensure

890

renewals; conforming a cross-reference; amending s. 397.407,

891

F.S.; requiring licensure fees to cover the cost of regulation;

892

requiring background screening for owners, directors, chief

893

financial officers, and clinical supervisors; limiting the

894

instances in which the department may issue a probationary

895

license; granting the department authority to deny a renewal

896

application of a regular license if received fewer than 30 days

897

before expiration; revising limitations on referrals to recovery

898

residences; renumbering and amending s. 397.451, F.S.; requiring

899

clinical supervisors to undergo background screening; creating

900

s. 397.410, F.S.; requiring the department to establish minimum

901

standards for licensure of substance abuse service components;

902

specifying standards, procedures, and staffing requirements;

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 807 (2017)

Amendment No.

903 directing the department to establish the scope of deficiency by
904 rule; requiring the department to complete certain steps in the
905 rulemaking process by specific dates; amending s. 397.411, F.S.;
906 authorizing the department to conduct announced and unannounced
907 inspections; establishing classes of violations for substance
908 abuse service providers; amending s. 397.415, F.S.; providing
909 criteria for the department to impose a fine, corrective action
910 plan, immediate moratorium, or emergency suspension; providing
911 criteria for the department to deny, suspend, or revoke a
912 license; repealing s. 397.471, F.S., relating to service
913 provider facility standards; creating s. 397.4873, F.S.;
914 limiting referrals to and from recovery residences in certain
915 circumstances; providing exceptions from limitations on
916 referrals; requiring a service provider to maintain certain
917 referral records; providing penalties; amending s. 397.501,
918 F.S.; providing that an application for the disclosure of an
919 individual's records may be filed as part of an active criminal
920 investigation; authorizing a court to approve an application for
921 the disclosure of an individual's substance abuse treatment
922 records without providing express notice of the application to
923 the individual or identified parties with an interest in the
924 records if the application is filed as part of an active
925 criminal investigation; providing that upon implementation of
926 the order granting such application, the individual and
927 identified parties with an interest in the records must be

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 807 (2017)

Amendment No.

928 | afforded an opportunity to seek revocation or amendment of that
929 | order; creating s. 397.55, F.S.; providing legislative findings;
930 | prohibiting service providers, operators of recovery residences,
931 | and certain third parties from engaging in specified marketing
932 | practices; providing penalties; amending s. 501.605, F.S.;
933 | requiring entities providing marketing services pursuant to s.
934 | 397.55, F.S., to be licensed; exempting such entities from
935 | licensure requirement to post a bond, letter of credit, or
936 | certificate of deposit; amending s. 501.606, F.S.; requiring
937 | entities providing marketing services to make certain
938 | disclosures in their applications for licensure; amending s.
939 | 501.608, F.S.; requiring an entity providing substance abuse
940 | marketing services to exhibit an active license before a local
941 | occupational license may be issued or reissued; amending s.
942 | 501.612, F.S.; granting the Department of Agriculture and
943 | Consumer Services the ability take action against an entity
944 | providing substance abuse marketing services' license; amending
945 | s. 501.618, F.S.; subjecting an entity providing substance abuse
946 | marketing services to civil remedies for licensure violation;
947 | creating s.

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