

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 450

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Garcia

SUBJECT: Mental Health and Substance Use Disorders

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Fav/CS
2.	<u>Sneed</u>	<u>Williams</u>	<u>AHS</u>	Recommend: Favorable
3.	<u>Sneed</u>	<u>Hansen</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 450 promotes the use of peer specialists for recovery support in behavioral health care. A “peer specialist” is an individual who has been in recovery from a substance use disorder or mental illness or a family member or caregiver who supports a person with a current substance use disorder or mental illness.

The bill revises background screening requirements for peer specialists and requires a peer specialist to be certified, or be supervised by a licensed behavioral care professional or another certified peer specialist. The bill codifies existing training program and certification requirements for peer specialists provided by the Department of Children and Families.

The overall fiscal impact of the bill on state expenditures is indeterminate. To the extent the bill increases the number of peer specialists available to provide services and providers substitute those services for other more costly behavioral health services, the state may experience lower costs for mental health and substance abuse treatment. On the other hand, to the extent such services are in addition to current services, the state may incur additional costs for such treatment. The Department of Children and Families will incur minimal costs, which can be absorbed within existing department resources, to update its in-house background screening database.

The bill takes effect July 1, 2018.

II. Present Situation:

Behavioral Health Workforce Shortage

Workforce issues for providers of substance use disorder and mental illness treatment and recovery services, which have been of concern for decades, have taken on a greater sense of urgency with the passage of recent parity and health reform legislation.¹ The Affordable Care Act increased the number of people who are eligible for health care coverage, including behavioral health services. In addition, as screening for mental illness and substance abuse becomes more frequent in primary care, more people will need behavioral health services. Furthermore, workforce shortages will be impacted by additional demands that result from: (1) a large number of returning veterans in need of services; and (2) new state re-entry initiatives to reduce prison populations, a large majority of whom have mental or substance use disorders.²

Shortages of qualified behavioral health workers, recruitment and retention of staff, and an aging workforce have long been cited as problems. Lack of workers in rural areas and the need for a workforce more reflective of the racial and ethnic composition of the U.S. population create additional barriers to accessing care for many. Recruitment and retention efforts are hampered by inadequate compensation, which discourages many from entering or remaining in the field. In addition, the misunderstanding and prejudice of persons with mental and substance use disorders can negatively affect the use of peer specialists.

Opioid Crisis

Florida has experienced an exponential growth in overdoses and deaths from overdoses from opioids.³ In 2016, Florida had 53,180 deaths from overdoses of legal and illegal opioids.⁴ The overdoses and deaths have significant social and economic impact to the state. For example, families are negatively impacted as more children must be removed from their homes due to substance use by parents.

On May 3, 2017, Governor Rick Scott, following the declaration of a national opioid epidemic by the Centers for Disease Control and Prevention (CDC), signed Executive Order 17-146 declaring a public health emergency across the state for the opioid epidemic in Florida.⁵ The Executive Order allowed the state to immediately draw down more than \$27 million in federal grant funding from the U.S. Department of Health and Human Services Opioid State Targeted Response Grant to provide prevention, treatment and recovery support services. In addition, Florida's Surgeon General Dr. Celeste Philip issued a standing order to pharmacists in Florida to

¹ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. Report to Congress on the Nation's Substance Abuse and Mental Health Workforce Issues. January 24, 2013. Available at: <https://store.samhsa.gov/shin/content/PEP13-RTC-BHWOR/PEP13-RTC-BHWOR.pdf> (last visited Nov. 2, 2017).

² *Id.*

³ Jim Hall, Senior Epidemiologist, Center for Applied Research on Substance Use and Health Disparities, Nova Southeastern University. Presentation to the Senate Appropriations Subcommittee on Health and Human Services, Oct. 25, 2017. Available at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AHS/MeetingRecords/MeetingPacket_3987.pdf (last visited Nov. 2, 2017).

⁴ *Id.*

⁵ Office of the Governor, Executive Order number 17-146. Available at <http://www.flgov.com/wp-content/uploads/2017/05/17146.pdf> (last visited Nov. 2, 2017).

dispense Naloxone to emergency responders (law enforcement officers, firefighters, paramedics, and emergency medical technicians) to treat individuals showing signs of opioid overdose.

Use of Peer Specialists

Research has shown that recovery from a substance use disorder or mental illness is facilitated by the use of social support provided by peers.⁶ The most recognized form of peer support is the 12-step programs of Alcoholic Anonymous and Narcotic Anonymous. More recently, peers or peer specialists have been used to assist persons with serious mental illnesses.⁷

Research has identified four types of social support provided by peers:

- Emotional - where a peer demonstrates empathy, caring or concern to bolster a person's self-esteem. This is often provided by peer mentoring or peer-led support groups.
- Informational - where a peer shares knowledge and information to provide life or vocational skills training. Examples include parenting classes, job readiness training, and wellness seminars.
- Instrumental - where a peer provides concrete assistance to help others accomplish tasks. Examples include child care, transportation, and help accessing health and human services.
- Affiliational - where a peer facilitates contacts with other people to promote learning of social skills, create a sense of community, and acquire a sense of belonging. Examples include staffing recovery centers, sports league participation, and alcohol or drug free socialization.⁸

The Department of Children and Families (department) Florida Peer Services Handbook defines a peer as an individual who has life experience with a mental health and/or substance use condition.⁹ Current department guidelines recommend that an individual be in recovery for at least two years to be considered for peer specialist training. In Florida, family members or caregivers may also be certified as peer specialists.

The Florida Certification Board currently offers certification with three distinct endorsements for individuals with lived experience who wish to become certified as Peer Specialists. General requirements for certification include being age 18 or older, achieving minimum education of high school diploma or equivalent, passing background screening, completing a minimum of 40 hours of training, and passing a competency exam.¹⁰

⁶ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment. What Are Peer Recovery Support Services? Available at <https://store.samhsa.gov/shin/content/SMA09-4454/SMA09-4454.pdf> (last visited Nov. 2, 2017).

⁷ National Public Radio. In Texas, People with Mental Illness Are Finding Work Helping Peers. July 11, 2017. <http://www.npr.org/sections/health-shots/2017/07/11/536501069/in-texas-people-with-mental-illness-are-finding-work-helping-peers> (last visited Nov. 2, 2017).

⁸ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment. What Are Peer Recovery Support Services? Available at <https://store.samhsa.gov/shin/content/SMA09-4454/SMA09-4454.pdf> (last visited Nov. 2, 2017).

⁹ Department of Children and Families, Florida Peer Services Handbook. Available at <http://www.myflfamilies.com/service-programs/substance-abuse/publications> (last visited Nov. 2, 2017).

¹⁰ SB 450 Department of Children and Families Bill Analysis. Oct. 11, 2017. On file with the Senate Committee on Children, Families and Elder Affairs.

Barriers to the Use of Peer Specialists

Currently, there is a shortage of peer specialists working within behavioral health services. As of June 2017, there were 418 individuals with active certification through the Florida Certification Board.¹¹

There are two principal barriers to the use of peer specialists. First, peer specialists often cannot pass background screening requirements in ss. 435.04 and 408.809, F.S. Persons who have recovered from a substance use disorder or mental illness often have a criminal history.¹² Common offenses may include using and selling illegal substances, prostitution, or financial fraud. Section 435.04, F.S., allows a person with a disqualifying offense identified through background screening to apply to the respective state agency head (the Secretary of the Department of Children and Families or the Secretary of the Agency for Health Care Administration) for an exemption if it has been three or more years since the person's conviction. The applicant must produce all court records regarding the convictions, letters of recommendation, evidence of their rehabilitation, education, and employment, and must also complete a questionnaire. The requirements for this exemption often deter persons from becoming peer specialists.

Second, only recently have peer specialists been reimbursed as a behavioral health care service. Medicaid billing for peer support services began in Georgia in 1999 and quickly expanded nationally in 2007 after the Centers for Medicare and Medicaid Services (CMS) sent guidelines to states on how to be reimbursed for services delivered by peer providers.¹³ In 2012, Georgia was approved as the first state to bill for a peer whole health and wellness service delivered by peer providers. CMS' Clarifying Guidance on Peer Services Policy from May 2013 states that any peer provider must "complete training and certification as defined by the state" before providing billable services.¹⁴ Beginning January 1, 2014, CMS expanded the type of practitioners who can provide Medicaid prevention services beyond physicians and other licensed practitioners, at a state's discretion, which can include peer providers.¹⁵ Florida's Medicaid program currently covers peer recovery services. The department also allows the state's behavioral health managing entities to reimburse for these services.¹⁶

III. Effect of Proposed Changes:

Section 1 amends s. 394.455, F.S., to define "peer specialist," as a person who has been in recovery from a substance use disorder or mental illness for the past 2 years, or a family member of such a person, and who is certified under s. 397.417, F.S. (created by section 6 of the bill).

¹¹ *Id.*

¹² *Id.*

¹³ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. SMDL #07-011. Aug. 15, 2007. On file with the Senate Committee on Children, Families and Elder Affairs.

¹⁴ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. Clarifying Guidance on Peer Support Services Policy. May 1, 2013. On file with the Senate Committee on Children, Families and Elder Affairs.

¹⁵ Substance Abuse and Mental Health Services Administration and U.S. Department of Health and Human Services - Center for Integrated Health Solutions. Peer Providers. On file with the Senate Committee on Children, Families and Elder Affairs.

¹⁶ SB 450 Department of Children and Families Bill Analysis. Oct. 11, 2017. On file with the Senate Committee on Children, Families and Elder Affairs.

This is consistent with the department’s definition for peer specialists and recommended recovery time, and is consistent with national standards.

Section 2 amends s. 394.4572, F.S., relating to background screening of mental health personnel. The bill conforms this statute to the requirements of the newly created s. 397.417, F.S., relating to the background screening of peer specialists.

Section 3 amends s. 394.4573, F.S., to add the use of peer specialists to the list of recovery support services as an essential element of a coordinated system of behavioral health care.

Section 4 amends s. 397.311, F.S., providing definitions in Chapter 397, F.S., relating to Substance Abuse Services, to include a definition for “peer specialist.”

Section 5 amends s. 397.4073, F.S., relating to background screening for persons working with individuals with substance use disorders. The section removes provisions authorizing agency heads to exempt persons who have recovered from a substance use disorder from drug offenses that would otherwise disqualify them from providing peer recovery services. This language is no longer needed as section 6 revises background screening requirements in the newly created s. 397.417, F.S.

Section 6 creates s. 397.417, F.S., relating to behavioral health peer specialists. This section provides legislative findings that: there is a shortage of behavioral health care employees; the state is experiencing an opioid epidemic; and peers are often an effective support for persons with substance use disorders or mental illness because the peer shares common life experiences. The bill also specifies intent to expand the use of peer specialists as a cost-effective behavioral health care service.

The section sets qualifications for peer specialists and responsibilities of the department. A peer specialist must be certified and meet the background screening requirements, as well as complete a training program approved by the department. The department must develop a training program for peer specialists—with preference given to trainers who are certified peer specialists—and certify peer specialists directly or may designate a private, nonprofit certification organization to certify peer specialists, implement the training program, and administer the competency exam. The section also requires peer specialists that are providing services be supervised by a licensed behavioral health care professional or a certified peer specialist.

In addition, section 6 also provides that peer specialist services may be reimbursed as a recovery service through the department, behavioral health managing entity, or the Medicaid program.

The section specifies revised background screening requirements that differ from current law because persons who have recovered from a substance use disorder or mental illness may be more likely to have committed certain offenses.¹⁷ Under current law and department rule, peers working with persons suffering from substance use disorders must meet background screening requirements in s. 435.04, F.S. Peers working with persons suffering from mental illness must

¹⁷ SB 450 Department of Children and Families Bill Analysis. Oct. 11, 2017. On file with the Senate Committee on Children, Families and Elder Affairs.

meet the screening requirements in s. 435.04 F.S., as well as those in s. 408.409, F.S. The new screening requirements eliminate the following disqualifying offenses from current law for peer specialists:

- Misdemeanor assault, or battery (ch. 784, F.S.),
- Prostitution (ch. 796, F.S.),
- Lower level burglary offenses (s. 810.02, F.S.),
- Lower level theft and robbery offenses (ch. 812, F.S.),
- Lower level drug abuse offenses (s. 817.563 and ch. 893, F.S.),
- Mail or wire fraud (s. 817.034, F.S.),
- Insurance fraud (s. 817.234, F.S.),
- Credit card fraud (ss. 817.481, 817.60, and 817.61, F.S.),
- Identification fraud (s. 817.568, F.S.), and
- Forgery (ss. 831.01, 831.02, 831.07 and 831.09, F.S.).

Finally, the section includes a grandfather clause to allow all peer specialists certified as of the effective date of the act to be recognized as having met the requirements of this bill.

Section 7 amends s. 212.055, F.S., relating to the county public hospital surtax, to incorporate a conforming cross reference to a definition in chapter 397, F.S., relating to substance abuse.

Section 8 amends s. 394.495, F.S., relating to children's mental health care, to incorporate conforming cross references to definitions.

Section 9 amends s. 394.496, F.S., relating to mental health service planning, to incorporate conforming cross references to definitions.

Section 10 amends s. 394.9085, F.S., relating to behavioral health service provider liability, to incorporate conforming cross references to definitions.

Section 11 amends s. 397.416, F.S., relating to substance use disorder treatment services, to incorporate conforming revisions.

Section 12 amends s. 409.972, F.S., relating to enrollment in Medicaid, to incorporate a conforming cross reference.

Section 13 amends s. 440.102, F.S., relating to the drug-free workplace program, to incorporate conforming cross references to definitions.

Section 14 amends s. 744.2007, F.S., relating to public guardians, to incorporate a conforming cross reference to a definition.

Section 15 provides the bill takes effect July 1, 2018.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill will allow additional peer specialists to be employed to provide recovery services to persons suffering from a substance use disorder and or a mental illness. To the extent the bill increases the number of peer specialists available to provide services and providers substitute those services for other more costly behavioral health services, private insurers and Medicaid managed care plans may see a reduction in the cost of behavioral health care services. On the other hand, to the extent such services are in addition to current services, private insurers and Medicaid managed care plans may incur additional costs for such treatment.

The bill requires that peer specialists be supervised by a licensed behavioral health care professional or a licensed behavioral health care agency, which may increase costs for those providers currently employing peer specialists.

The bill may result in additional background screenings if more persons apply to be peer specialists. The individual or behavioral health care provider would be charged a fee to cover the cost of the background screening. The individual may also incur a certification testing fee. However, the Department of Children and Families currently provides resources to offset such costs for individuals who may not have the ability to pay for the certification.

C. Government Sector Impact:

The state may see a reduction in the cost of behavioral health care services if more health insurance providers make use of peer specialists. This would be due to the effectiveness of peer specialists in assisting persons recovering from substance use disorders or mental illnesses and the lower cost of peer recovery services compared to other behavioral health care services.

The Department of Children and Families will incur minimal costs, which can be absorbed within existing department resources, to update its in-house background screening database.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.4572, 394.4573, 397.311, and 397.4073.

The bill amends the following sections of the Florida Statutes to incorporate conforming cross references: 212.055, 394.495, 394.496, 394.9085, 397.416, 409.972, 440.102, and 744.2007.

This bill creates section 397.417 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on November 13, 2017:

- Adds a family member or caregiver of a person with a substance use disorder or mental illness to the definition of a peer specialist. This is current practice and family members presently serve as certified peer specialists in Florida.
- Allows certified peer specialists, along with licensed behavioral health care professionals, to supervise other peer specialists. The CS removes supervision by a behavioral health care agency.
- Clarifies that peer specialists must have had no felony convictions for at least 3 years and meet the background screening requirements in the bill.
- Requires peer specialists to have completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for any felony prior to being certified.
- Adds felony assault and battery, female genital mutilation, and robbery as offenses that would disqualify peer specialists. The CS clarifies that drug offenses that are first and second degree are disqualifying for peer specialists. Peer specialists would still be able to request an exemption from a state agency. The CS removes the offense of selling a non-controlled substance as a controlled substance from the list of disqualifying offenses.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
