

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1120

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

SUBJECT: Child Welfare

DATE: February 23, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Berger</u>	<u>Cox</u>	<u>CF</u>	<b>Fav/CS</b>
2.	<u>Sneed</u>	<u>Money</u>	<u>AHS</u>	<b>Recommend: Favorable</b>
3.	<u>Sneed</u>	<u>Sadberry</u>	<u>AP</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1120 authorizes the Department of Children and Families (DCF) to place children who meet the definition of a “child or adolescent who has an emotional disturbance” or a “child or adolescent who has a serious emotional disturbance or mental illness” in therapeutic group homes for mental health treatment without prior court approval under certain circumstances.

The DCF has established a process for credentialing existing licensed therapeutic group homes (TGHs) as a qualified residential treatment program (QRTP). The bill ensures that the credentialing process the DCF has established will result in placements that are in accordance with rule and in compliance with federal requirements.

The bill makes a number of changes to definitions in section 39.407, Florida Statutes, relating to medical, psychiatric, and psychological examinations and treatment of the child, to:

- Define the term “therapeutic group home” to mean a 24-hour residential program providing community-based mental health treatment and mental health support services in a nonsecure, homelike setting to children who meet the criteria in section 394.492(5) or (6), Florida Statutes.
- Amend the definition of “residential treatment” or “residential treatment program” to include a therapeutic group home as defined above.
- Clarify the definition of “suitable for residential treatment” or “suitability” to apply when the child requires residential treatment program if the child is expected to benefit from mental, emotional, or behavioral health treatment.

The bill codifies current practice, requiring the DCF, rather than the Agency for Health Care Administration (AHCA), to appoint the qualified evaluator to conduct suitability assessments and modifies the time frame for providing a copy of the assessment to the child's guardian ad litem and the court to within 5 days of receipt of the assessment.

The bill requires a qualified evaluator for a TGH or a QRTP to be a licensed clinician with at least two years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents, as opposed to a psychiatrist or a psychologist licensed in Florida with three years of experience, as required for residential treatment. According to the DCF, this is expected to increase the pool of qualified evaluators beyond the 18 currently used for suitability assessments.<sup>1</sup>

Lastly, the bill authorizes the DCF to adopt rules to administer the provisions of the bill.

The bill does not have a fiscal impact on state or local governments.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Family First Prevention Services Act (FFPSA)

The FFPSA, included in the 2018 Bipartisan Budget Act,<sup>2</sup> focuses on evidence-based services to prevent children from entering foster care; limits reimbursement for congregate (group home) care; and makes changes affecting adoption subsidies, reunification, and extended foster care supports. This act reforms the federal child welfare financing streams, Title IV-E and Title IV-B of the Social Security Act, to provide services to families who are at risk of entering the child welfare system. The bill aims to prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment, and in-home parenting skill training. It also seeks to improve the well-being of children already in foster care by incentivizing states to reduce the placement of children in residential group care. States can now receive 50 percent reimbursement for specifically approved evidence-based prevention services that address mental health, substance abuse, family counseling, and parent skills training in an effort to avoid an out-of-home placement for children. The FFPSA also limits federal funding for group homes placements.<sup>3</sup>

Congress made the FFPSA effective October 1, 2018, but gave states the opportunity to delay implementation of select provisions of the law.<sup>4</sup> Florida received approval to delay the implementation of the FFPSA until October 1, 2021.

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<sup>1</sup> The DCF, *Agency Analysis for SB 1120*, p. 3, (on file with the Senate Committee on Children and Families).

<sup>2</sup> H.R. 1862 of 2018. Pub.L. 115-123

<sup>3</sup> The DCF, *The Florida Center for Child Welfare FFPSA Updates*, available at [Florida's Center for Child Welfare | FFPSA Updates \(usf.edu\)](https://www.usf.edu/ffpsa-updates/); see also the National Conference of State Legislatures (NCSL), *Family First Prevention Services Act*, available at <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> (all sites last visited January 18, 2022).

<sup>4</sup> The NCSL, *Family First Prevention Services Act*, available at <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> (last visited January 18, 2022).

## **Mental Health Residential Treatment Programs**

Residential Treatment Centers for Children and Adolescents (RTC) are 24 hour residential programs, including therapeutic group homes, licensed by the AHCA.<sup>5</sup> These centers were designed to provide mental health treatment and services to children under the age of 18 who have been diagnosed as having mental, emotional, or behavioral disorders.<sup>6</sup> All providers rendering Florida Medicaid therapeutic group care services to recipients must be in compliance with the provisions of the Florida Medicaid Therapeutic Group Care Services Coverage Policy, July 2017.<sup>7</sup>

Section 394.4781, F.S., authorizes the DCF to pay a portion of the costs associated with residential care for children who have been diagnosed with severe emotional disturbance, who are recommended to need a residential level of mental health treatment by a Florida licensed psychologist or psychiatrist, and who are not eligible for public or private insurance.<sup>8</sup> Due to limited funds, the DCF must review applications monthly to approve or deny applications for treatment according to the following criteria:<sup>9</sup>

- The severity level of the child’s mental health;
- The financial means of the child’s family;
- The availability of the needed residential care; and
- The funds available to the DCF.<sup>10</sup>

Mental health treatment is aimed to assist children to live successfully in their community and with their families. Placement into a residential mental health treatment center is made only after careful consideration and assessments. Before a placement, all other avenues of less restrictive treatment are weighed and must be deemed non appropriate.<sup>11</sup> Only if the needed services cannot be provided in a less restrictive environment, a residential mental health treatment program is then considered for the child.<sup>12</sup>

### ***Qualified Residential Treatment Programs***

Qualified Residential Treatment Programs (QRTP) are a new placement setting created by the FFPSA, which were implemented in Florida in May 2021.<sup>13</sup> Placement of a child in a QRTP is for the specific purpose of addressing the child’s emotional and behavioral health needs through observation, diagnosis, and treatment in a treatment setting.<sup>14</sup>

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<sup>5</sup> See the ACHA, *Residential Treatment Centers for Children and Adolescents*, available at [https://ahca.myflorida.com/mchq/health\\_facility\\_regulation/hospital\\_outpatient/rtc.shtml](https://ahca.myflorida.com/mchq/health_facility_regulation/hospital_outpatient/rtc.shtml) (last visited January 20, 2022)

<sup>6</sup> *Id.*

<sup>7</sup> Rule 59G-4.295, F.A.C.

<sup>8</sup> Section 394.4781, F.S.

<sup>9</sup> See the DCF, *Children's Mental Health Residential Treatment*, available at <https://www.myflfamilies.com/service-programs/samh/childrens-mental-health/residential-treatment.shtml> (last visited January 18, 2022).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The DCF, *Agency Analysis for SB 1120*, January 21, 2022, p. 2-3 (on file with Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited “The DCF SB 1120 Analysis”). Florida has defined QRTPs through rulemaking authority under Rule 65C-28.021, F.A.C.

<sup>14</sup> *Id.*

Florida currently has five licensed QRTPs with a total capacity of 50 beds. A QRTP must obtain a residential treatment center license through the AHCA and a credential from the DCF, which aligns the QRTP with all federal requirements.<sup>15</sup> Each facility that aims to be a QRTP must meet the licensing requirements set forth in s. 394.875, F.S., and the credentialing standards set forth in Rule 65C-46.021, F.A.C.

The DCF states that reimbursement for the service delivery is available for children placed in the QRTP through the bundled specialized therapeutic group home fee as a result of the state agency collaborative approach to license and credential a QRTP.<sup>16</sup>

The FFPSA requires an assessment using an evidence-based tool within 30 days of placement. The DCF states it has identified the Child and Adolescent Needs and Strengths (CANS) – Trauma version as the evidence-based tool that has been incorporated into the suitability assessment.<sup>17</sup> Although Florida law does not contemplate QRTP assessments, any child in need of placement in a QRTP is required to submit to a suitability assessment to align with s. 39.407, F.S.

### ***Specific Children In Need of Placement in a RTC or QRTP***

RTCs and QRTPS serve children and adolescents with emotional disturbance or serious emotional disturbance or mental illness. Section 394.492(5), F.S., defines a “child or adolescent who has an emotional disturbance” to mean a person under 18 years of age who is diagnosed with a mental, emotional, or behavioral disorder of sufficient duration to meet one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association, but who does not exhibit behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community.<sup>18</sup>

Additionally, s. 394.492(6), F.S., defines a “child or adolescent who has a serious emotional disturbance or mental illness” to mean a person under 18 years of age who:

- Is diagnosed as having a mental, emotional, or behavioral disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; and
- Exhibits behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community, which behaviors are not considered to be a temporary response to a stressful situation.

Both of these terms do not include a child or adolescent who meets the criteria for involuntary placement under s. 394.467(1), F.S., also known as the Baker Act.<sup>19</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> The DCF SB 1120 Analysis, p. 3.

<sup>17</sup> *Id.*

<sup>18</sup> The definition further provides that that the emotional disturbance must not be considered to be a temporary response to a stressful situation.

<sup>19</sup> The Baker Act is contained in ch. 394, F.S.

## Licensure of Mental Health Residential Treatment Facilities

Under Rule 65E-4.016 of the Florida Administrative Code, to be licensed as a mental health residential treatment facility an applicant must provide a long term, homelike residential environment that provides care, support, assistance and limited supervision in daily living to adults diagnosed with a serious and persistent major mental illness who do not have another primary residence.<sup>20</sup> Any facility licensed as a residential treatment facility must sustain a 60 day average or greater length of stay of residents, except as specifically provided for in s. 394.875(11), F.S.<sup>21</sup>

## Qualified Evaluators and Suitability Assessments for Placement

Section 39.407(6), F.S., requires the DCF to conduct an examination and suitability assessment if it is believed that a child needs residential treatment and prior to placing the child in a Psychiatric Residential Treatment Facility (PRTF/SIPP) or a Therapeutic Group Home (TGH).<sup>22</sup> Currently, the suitability assessment must be conducted by a qualified evaluator appointed by AHCA.<sup>23</sup>

The Department contracts with the Qualified Evaluator Network (QEN) who is responsible for recruiting qualified evaluators to conduct suitability assessments and render a recommendation within eleven business days from receipt of the referral.

The Qualified Evaluator Network (QEN) was established by Magellan in July 2001 to provide assessment services for children in the care and custody of the DCF. The DCF contracts with the QEN who is responsible for recruiting qualified evaluators to conduct suitability assessments. Each assessment must provide an independent, professional assessment of suitability for residential treatment for mental health.<sup>24</sup> QENs are intended to prevent premature or inappropriate referrals to residential psychiatric placements and utilizing the QEN results in a return to community-based services as soon as clinically possible.<sup>25</sup>

Once a qualified evaluator receives a referral, the contract requires that a recommendation be rendered within 11 business days from receipt of the referral.<sup>26</sup> The DCF states that at this time there are only 18 qualified evaluators statewide who are completing assessments within an average of six business days. Through the implementation of teleconference, the QEN was able to reduce the time it takes to complete an assessment with final submission by the QEN to the Community-Based Care lead agency.<sup>27</sup>

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<sup>20</sup> Rule 65E-4.016, F.A.C.

<sup>21</sup> *Id.*

<sup>22</sup> Section 39.407(6), F.S.

<sup>23</sup> See the DCF, *Suitability for Residential Placement Guidelines*, available at <https://www.myflfamilies.com/service-programs/community-based-care/docs/SuitabilityAssessmentGuidance.pdf> (last visited January 20, 2022).

<sup>24</sup> See Magellan Healthcare, *Qualified Evaluator Network*, available at <https://www.magellancompletecareoffl.com/documents/2019/09/florida-qen-overview.pdf#:~:text=All%20Qualified%20Evaluators%20are%20required,in%2Dpatient%20or%20STGH%20facility> (last visited January 21, 2022).

<sup>25</sup> *Id.*

<sup>26</sup> The DCF SB 1120 Analysis, p. 2-3.

<sup>27</sup> *Id.*, p. 3.

Initially, the suitability assessment was conducted by a qualified evaluator appointed through a contract with Magellan procured by the AHCA. During this time, the DCF was the primary executor the contract, but the AHCA held the rulemaking authority, set the fee schedule for the evaluators, and maintained the list of providers. However, in 2016, the contract under Magellan was transferred entirely to the DCF to determine the qualified evaluator requirements.<sup>28</sup> This contract transfer allotted for a more cohesive execution of services. The DCF currently continues to contract with this third-party vendor for the management of the QEN.<sup>29</sup>

Under s. 39.407(6)(d), F.S., the timeframe to provide the assessments to the guardian ad litem and the court is “immediately” upon placement.<sup>30</sup>

### ***Rulemaking Authority***

The rulemaking authority for suitability assessments is currently split between the DCF and AHCA, specifically requiring:

- The DCF to adopt rules for implementing timeframes for the completion of suitability assessments by qualified evaluators and a procedure that includes timeframes for completing the 60-day independent review by the qualified evaluators of the child’s progress toward achieving the goals and objectives of the treatment plan.
- The AHCA to adopt rules for the registration of qualified evaluators, the procedure for selecting the evaluators to conduct the reviews required under s. 39.407, F.S., and a reasonable, cost-efficient fee schedule for qualified evaluators.<sup>31</sup>

### **Florida Medicaid Program**

The Medicaid program is a joint federal-state program that finances health coverage for individuals, including eligible low-income adults, children, pregnant women, elderly adults, and persons with disabilities.<sup>32</sup> The Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS) is responsible for administering the federal Medicaid program. Florida Medicaid is the health care safety net for low-income Floridians. Florida’s program is administered by the AHCA and financed through state and federal funds.<sup>33</sup>

A Medicaid state plan is an agreement between a state and the federal government describing how the state administers its Medicaid programs. The state plan establishes groups of individuals covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements.

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<sup>28</sup> See Magellan Complete Care, *Am I Eligible*, available at <https://www.magellancompletecareoffl.com/enrollment-and-renewal/are-you-eligible/>; see also Magellan Complete Care; *Qualified Evaluator Network (QEN)*, p. 7, available at [PowerPoint Presentation \(magellanoffloridacom\)](https://www.magellanoffloridacom.com) (all sites last visited January 20, 2022).

<sup>29</sup> See Magellan of Florida, *QEN Training Manual*, available at <https://www.magellanoffloridacom/documents/2019/09/2019-florida-qen-training-manual.pdf/> (last visited January 20, 2022).

<sup>30</sup> Section 39.407(6)(d), F.S.

<sup>31</sup> Section 39.407(6)(i), F.S.

<sup>32</sup> Medicaid.gov, *Medicaid*, available at <https://www.medicaid.gov/medicaid/index.html> (last visited January 23, 2022).

<sup>33</sup> Section 20.42, F.S.

In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups (optional eligibility groups). States set individual eligibility criteria within federal minimum standards. The AHCA may seek an amendment to the state plan as necessary to comply with federal or state laws or to implement program changes. States send state plan amendments to the federal CMS for review and approval.<sup>34</sup>

Florida Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service (FFS) or managed care. Under FFS, health care providers are paid by the state Medicaid program for each service provided to a Medicaid enrollee. Under managed care, the AHCA contracts with private managed care plans for the coordination and payment of services for Medicaid enrollees. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan.

In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program. The SMMC program has two components, the Managed Medical Assistance (MMA) program and the Long-term Care program. Florida's SMMC offers a health care package covering both acute and long-term care. The SMMC benefits are authorized by federal authority and are specifically required in ss. 409.973 and 409.98, F.S.

The AHCA contracts with managed care plans on a regional basis to provide services to eligible recipients. The MMA program, which covers most medical and acute care services for managed care plan enrollees, was fully implemented in August 2014 and was re-procured for a period beginning December 2018 and ending in 2023.

### **III. Effect of the Bill**

The bill amends s. 39.407, F.S., authorizing the DCF to place a child or adolescent who meets the definition of a “child or adolescent who has an emotional disturbance” or a “child or adolescent who has a serious emotional disturbance or mental illness” in therapeutic group homes for mental health treatment without prior court approval, under certain circumstances.

The bill makes a number of changes to definitions to s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child, to:

- Add the term “therapeutic group home,” which is not currently defined in ch. 39, F.S., and define such term to mean a 24-hour residential program providing community-based mental health treatment and mental health support services to children who meet the criteria in s. 394.492(5) or (6), F.S., in a nonsecure, homelike setting;
- Amend the definition of a “residential treatment” or “residential treatment program” to include a therapeutic group home as defined above; and

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<sup>34</sup> Medicaid.gov, *Medicaid State Plan Amendments*, available at <https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html> (last visited January 23, 2022).

- Expand the definition of “suitable for residential treatment” or “suitability” to include if the child is expected to benefit from emotional, or behavioral health treatment, in addition to mental health treatment.

Through the above definitions and the application of such terms throughout s. 39.407, F.S., the bill ensures that the process the DCF has established for credentialing an existing licensed therapeutic group home as a QRTP will result in placements that occur in accordance with rule and in compliance with federal requirements for QRTPs.

The bill also updates the qualified evaluators’ process to reflect current practices providing that the DCF, rather than the AHCA, must appoint qualified evaluators to conduct suitability assessments.

The bill requires the qualified evaluator for STGH and QRTP to be a psychiatrist licensed under chapter 458 or 459, F.S., psychologist licensed under chapter 490, F.S. or a mental health counselor licensed under chapter 491, F.S., with at least two years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents, as opposed to the stricter requirements for a PRTF/SIPP which requires the evaluator to be a psychiatrist or a psychologist licensed in Florida with three years of experience.

These changes to the qualifications are expected to expand the pool of qualified evaluators for conducting suitability assessments for STGH and QRTP placements to more than the 18 currently used for PRTF/SIPP suitability assessments<sup>35</sup> and create a larger recruitment pool for TGH and QRTP assessors. The third-party vendor contracted by the DCF for the management of the qualified evaluator network estimates that this change in requirements will increase the pool of potentially qualified evaluators by approximately 2,000.

The bill also amends s. 39.407, F.S., requiring the DCF to provide the guardian ad litem and the court with a copy of the assessment by the qualified evaluator within five days after the DCF’s receipt of the assessment, rather than immediately upon placement as required in current law.

The bill authorizes the DCF to adopt rules to administer the provisions of s. 39.407, F.S. This expanded authority will allow the DCF flexibility to adapt to the different needs of children being served, the needs of the provider community, and the ability to make changes in response to federal policy changes.

This act shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

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<sup>35</sup> The DCF SB 1120 Analysis, p. 3.



**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 39.407 of the Florida Statutes.

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

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

**CS by Children, Families, and Elder Affairs on January 25, 2022.**

The committee substitute:

- Modifies the definition of the term “therapeutic group home” (TGH) to remove the cross-reference to s. 419.001, F.S., and to remove the limitation of 16 beds for the TGHs; and
- Expands persons who can be qualified evaluators to include psychiatrists licensed under ch. 459, F.S., in addition to those licensed under ch. 458, F.S.

**B. Amendments:**

None.

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

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