



453624

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/03/2022	.	
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	.	
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The Committee on Children, Families, and Elder Affairs (Burgess) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsections (47), (48), and (49) of  
section 394.455, Florida Statutes, are redesignated as  
subsections (48), (49), and (50), respectively, and a new  
subsection (47) is added to that section, to read:

394.455 Definitions.—As used in this part, the term:

(47) "Telehealth" has the same meaning as provided in s.



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11 456.47.

12 Section 2. Paragraphs (a), (b), and (c) of subsection (5)  
13 of section 394.459, Florida Statutes, are amended, present  
14 paragraphs (d), (e), and (f) are redesignated as paragraphs (e),  
15 (f), and (g), respectively, and a new paragraph (d) is added to  
16 that subsection, to read:

17 394.459 Rights of patients.—

18 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

19 (a) Each person receiving services in a facility providing  
20 mental health services under this part has the right to  
21 communicate freely and privately with persons outside the  
22 facility unless a qualified professional determines ~~it is~~  
23 ~~determined~~ that such communication is likely to be harmful to  
24 the person or others in a manner directly related to the  
25 person's clinical well-being, the clinical well-being of other  
26 patients, or the general safety of staff. Each facility shall  
27 make available as soon as reasonably possible to persons  
28 receiving services a telephone that allows for free local calls  
29 and access to a long-distance service. A facility is not  
30 required to pay the costs of a patient's long-distance calls.  
31 The telephone shall be readily accessible to the patient and  
32 shall be placed so that the patient may use it to communicate  
33 privately and confidentially. The facility may establish  
34 reasonable rules for the use of this telephone, provided that  
35 the rules do not interfere with a patient's access to a  
36 telephone to report abuse pursuant to paragraph (f) ~~(e)~~.

37 (b) Each patient admitted to a facility under the  
38 provisions of this part shall be allowed to receive, send, and  
39 mail sealed, unopened correspondence; and no patient's incoming



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40 or outgoing correspondence shall be opened, delayed, held, or  
41 censored by the facility unless a qualified professional  
42 determines that such correspondence is likely to be harmful to  
43 the patient or others in a manner directly related to the  
44 patient's clinical well-being, the clinical well-being of other  
45 patients, or the general safety of staff. If there is reason to  
46 believe that such correspondence ~~it~~ contains items or substances  
47 which may be harmful to the patient or others, ~~in which case~~ the  
48 administrator may direct reasonable examination of such mail and  
49 may regulate the disposition of such items or substances.

50 (c) Each facility must permit immediate access to any  
51 patient, subject to the patient's right to deny or withdraw  
52 consent at any time, by the patient's family members, guardian,  
53 guardian advocate, representative, Florida statewide or local  
54 advocacy council, or attorney, unless a qualified professional  
55 determines that such access would be detrimental to the patient  
56 in a manner directly related to the patient's clinical well-  
57 being, the clinical well-being of other patients, or the general  
58 safety of staff.

59 (d) If a patient's right to communicate with outside  
60 persons; receive, send, or mail sealed, unopened correspondence;  
61 or ~~to~~ receive visitors is restricted by the facility, written  
62 notice of such restriction and the reasons for the restriction  
63 shall be served on the patient, the patient's attorney, and the  
64 patient's guardian, guardian advocate, or representative; a  
65 qualified professional must document any restriction within 24  
66 hours and such restriction shall be recorded on the patient's  
67 clinical record with the reasons therefor. The restriction of a  
68 patient's right to communicate or to receive visitors shall be



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69 reviewed at least every 3 7 days. The right to communicate or  
70 receive visitors shall not be restricted as a means of  
71 punishment. Nothing in this paragraph shall be construed to  
72 limit the provisions of paragraph (e)~~(d)~~.

73 (e)~~(d)~~ Each facility shall establish reasonable rules  
74 governing visitors, visiting hours, and the use of telephones by  
75 patients in the least restrictive possible manner. Patients  
76 shall have the right to contact and to receive communication  
77 from their attorneys at any reasonable time.

78 (f)~~(e)~~ Each patient receiving mental health treatment in  
79 any facility shall have ready access to a telephone in order to  
80 report an alleged abuse. The facility staff shall orally and in  
81 writing inform each patient of the procedure for reporting abuse  
82 and shall make every reasonable effort to present the  
83 information in a language the patient understands. A written  
84 copy of that procedure, including the telephone number of the  
85 central abuse hotline and reporting forms, shall be posted in  
86 plain view.

87 (g)~~(f)~~ The department shall adopt rules providing a  
88 procedure for reporting abuse. Facility staff shall be required,  
89 as a condition of employment, to become familiar with the  
90 requirements and procedures for the reporting of abuse.

91 Section 3. Paragraph (b) of subsection (2) of section  
92 394.4599, Florida Statutes, is amended to read:

93 394.4599 Notice.—

94 (2) INVOLUNTARY ADMISSION.—

95 (b) A receiving facility shall give prompt notice of the  
96 whereabouts of an individual who is being involuntarily held for  
97 examination to the individual's guardian, guardian advocate,



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98 health care surrogate or proxy, attorney or representative, or  
99 other emergency contact identified through electronic databases  
100 pursuant to s. 394.463(2) (a), by telephone or in person within  
101 24 hours after the individual's arrival at the facility. Contact  
102 attempts shall be documented in the individual's clinical record  
103 and shall begin as soon as reasonably possible after the  
104 individual's arrival.

105 Section 4. Paragraph (a) of subsection (2) of section  
106 394.4615, Florida Statutes, is amended to read:

107 394.4615 Clinical records; confidentiality.—

108 (2) The clinical record shall be released when:

109 (a) The patient or the patient's guardian authorizes the  
110 release. The guardian or guardian advocate shall be provided  
111 access to the appropriate clinical records of the patient. The  
112 patient or the patient's guardian or guardian advocate may  
113 authorize the release of information and clinical records to  
114 appropriate persons to ensure the continuity of the patient's  
115 health care or mental health care. A receiving facility must  
116 document that, within 24 hours of admission, individuals  
117 admitted on a voluntary basis have been provided with the option  
118 to authorize the release of information from their clinical  
119 record to the individual's health care surrogate or proxy,  
120 attorney, representative, or other known emergency contact.

121 Section 5. Paragraphs (a), (e), (f), and (g) of subsection  
122 (2) of section 394.463, Florida Statutes, are amended, and  
123 subsection (5) is added to that section, to read:

124 394.463 Involuntary examination.—

125 (2) INVOLUNTARY EXAMINATION.—

126 (a) An involuntary examination may be initiated by any one



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127 of the following means:

128       1. A circuit or county court may enter an ex parte order  
129 stating that a person appears to meet the criteria for  
130 involuntary examination and specifying the findings on which  
131 that conclusion is based. The ex parte order for involuntary  
132 examination must be based on written or oral sworn testimony  
133 that includes specific facts that support the findings. If other  
134 less restrictive means are not available, such as voluntary  
135 appearance for outpatient evaluation, a law enforcement officer,  
136 or other designated agent of the court, shall take the person  
137 into custody and deliver him or her to an appropriate, or the  
138 nearest, facility within the designated receiving system  
139 pursuant to s. 394.462 for involuntary examination. The order of  
140 the court shall be made a part of the patient's clinical record.  
141 A fee may not be charged for the filing of an order under this  
142 subsection. A facility accepting the patient based on this order  
143 must send a copy of the order to the department within 5 working  
144 days. The order may be submitted electronically through existing  
145 data systems, if available. The order shall be valid only until  
146 the person is delivered to the facility or for the period  
147 specified in the order itself, whichever comes first. If a time  
148 limit is not specified in the order, the order is valid for 7  
149 days after the date that the order was signed.

150       2. A law enforcement officer shall take a person who  
151 appears to meet the criteria for involuntary examination into  
152 custody and deliver the person or have him or her delivered to  
153 an appropriate, or the nearest, facility within the designated  
154 receiving system pursuant to s. 394.462 for examination. The  
155 officer shall execute a written report detailing the



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156 | circumstances under which the person was taken into custody,  
157 | which must be made a part of the patient's clinical record. The  
158 | report must include all emergency contact information for the  
159 | person that is readily accessible to the law enforcement  
160 | officer, including information available through electronic  
161 | databases maintained by the Department of Law Enforcement or by  
162 | the Department of Highway Safety and Motor Vehicles. Such  
163 | emergency contact information may be used by a receiving  
164 | facility only for the purpose of informing listed emergency  
165 | contacts of a patient's whereabouts and shall otherwise remain  
166 | confidential and exempt pursuant to s. 119.0712(2)(d). Any  
167 | facility accepting the patient based on this report must send a  
168 | copy of the report to the department within 5 working days.

169 |         3. A physician, a physician assistant, a clinical  
170 | psychologist, a psychiatric nurse, an advanced practice  
171 | registered nurse registered under s. 464.0123, a mental health  
172 | counselor, a marriage and family therapist, or a clinical social  
173 | worker may execute a certificate stating that he or she has  
174 | examined a person within the preceding 48 hours and finds that  
175 | the person appears to meet the criteria for involuntary  
176 | examination and stating the observations upon which that  
177 | conclusion is based. If other less restrictive means, such as  
178 | voluntary appearance for outpatient evaluation, are not  
179 | available, a law enforcement officer shall take into custody the  
180 | person named in the certificate and deliver him or her to the  
181 | appropriate, or nearest, facility within the designated  
182 | receiving system pursuant to s. 394.462 for involuntary  
183 | examination. The law enforcement officer shall execute a written  
184 | report detailing the circumstances under which the person was



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185 taken into custody. The report must include all emergency  
186 contact information for the person that is readily accessible to  
187 the law enforcement officer, including information available  
188 through electronic databases maintained by the Department of Law  
189 Enforcement or by the Department of Highway Safety and Motor  
190 Vehicles. Such emergency contact information may be used by a  
191 receiving facility only for the purpose of informing listed  
192 emergency contacts of a patient's whereabouts and shall  
193 otherwise remain confidential and exempt pursuant to s.  
194 119.0712(2)(d). The report and certificate shall be made a part  
195 of the patient's clinical record. Any facility accepting the  
196 patient based on this certificate must send a copy of the  
197 certificate to the department within 5 working days. The  
198 document may be submitted electronically through existing data  
199 systems, if applicable.

200  
201 When sending the order, report, or certificate to the  
202 department, a facility shall, at a minimum, provide information  
203 about which action was taken regarding the patient under  
204 paragraph (g), which information shall also be made a part of  
205 the patient's clinical record.

206 (e) The department shall receive and maintain the copies of  
207 ex parte orders, involuntary outpatient services orders issued  
208 pursuant to s. 394.4655, involuntary inpatient placement orders  
209 issued pursuant to s. 394.467, professional certificates, ~~and~~  
210 law enforcement officers' reports, and reports relating to the  
211 transportation of patients. These documents shall be considered  
212 part of the clinical record, governed by the provisions of s.  
213 394.4615. These documents shall be used to prepare annual





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214 reports analyzing the data obtained from these documents,  
215 without information identifying patients, and shall provide  
216 copies of reports to the department, the President of the  
217 Senate, the Speaker of the House of Representatives, and the  
218 minority leaders of the Senate and the House of Representatives.

219 (f) A patient shall be examined by a physician or a  
220 clinical psychologist, or by a psychiatric nurse performing  
221 within the framework of an established protocol with a  
222 psychiatrist at a facility without unnecessary delay to  
223 determine if the criteria for involuntary services are met.  
224 Emergency treatment may be provided upon the order of a  
225 physician if the physician determines that such treatment is  
226 necessary for the safety of the patient or others. The patient  
227 may not be released by the receiving facility or its contractor  
228 without the documented approval of a psychiatrist or a clinical  
229 psychologist or, if the receiving facility is owned or operated  
230 by a hospital or health system, the release may also be approved  
231 by a psychiatric nurse performing within the framework of an  
232 established protocol with a psychiatrist, or an attending  
233 emergency department physician with experience in the diagnosis  
234 and treatment of mental illness after completion of an  
235 involuntary examination pursuant to this subsection. A  
236 psychiatric nurse may not approve the release of a patient if  
237 the involuntary examination was initiated by a psychiatrist  
238 unless the release is approved by the initiating psychiatrist.  
239 The release may be approved through telehealth.

240 (g) The examination period must be for up to 72 hours. For  
241 a minor, the examination shall be initiated within 12 hours  
242 after the patient's arrival at the facility. Within the



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243 examination period ~~or, if the examination period ends on a~~  
244 ~~weekend or holiday, no later than the next working day~~  
245 ~~thereafter~~, one of the following actions must be taken, based on  
246 the individual needs of the patient:

247 1. The patient shall be released, unless he or she is  
248 charged with a crime, in which case the patient shall be  
249 returned to the custody of a law enforcement officer;

250 2. The patient shall be released, subject to subparagraph  
251 1., for voluntary outpatient treatment;

252 3. The patient, unless he or she is charged with a crime,  
253 shall be asked to give express and informed consent to placement  
254 as a voluntary patient and, if such consent is given, the  
255 patient shall be admitted as a voluntary patient; or

256 4. A petition for involuntary services shall be filed in  
257 the circuit court if inpatient treatment is deemed necessary or  
258 with the criminal county court, as defined in s. 394.4655(1), as  
259 applicable. When inpatient treatment is deemed necessary, the  
260 least restrictive treatment consistent with the optimum  
261 improvement of the patient's condition shall be made available.  
262 When a petition is to be filed for involuntary outpatient  
263 placement, it shall be filed by one of the petitioners specified  
264 in s. 394.4655(4)(a). A petition for involuntary inpatient  
265 placement shall be filed by the facility administrator. If a  
266 patient's 72-hour examination period ends on a weekend or  
267 holiday, and the receiving facility:

268 a. Intends to file a petition for involuntary services,  
269 such patient may be held at a receiving facility through the  
270 next working day thereafter and such petition for involuntary  
271 services must be filed no later than such date. If the receiving



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272 facility fails to file a petition for involuntary services at  
273 the close of the next working day, the patient shall be released  
274 from the receiving facility.

275 b. Does not intend to file a petition for involuntary  
276 services, a receiving facility may postpone release of a patient  
277 until the next working day thereafter only if a qualified  
278 professional documents that adequate discharge planning and  
279 procedures in accordance with s. 394.468 are not possible until  
280 the next working day.

281 (5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND  
282 TREATMENT; PENALTIES.-

283 (a) A person may not knowingly and willfully:

284 1. Furnish false information for the purpose of obtaining  
285 emergency or other involuntary admission of another;

286 2. Cause or otherwise secure, or conspire with or assist  
287 another to cause or secure, any emergency or other involuntary  
288 procedure of another person under false pretenses; or

289 3. Cause, or conspire with or assist another to cause, the  
290 denial to any person of any right accorded pursuant to this  
291 chapter.

292 (b) A person who violates this subsection commits a  
293 misdemeanor of the first degree, punishable as provided in s.  
294 775.082 and by a fine not exceeding \$5,000.

295 Section 6. Section 394.468, Florida Statutes, is amended to  
296 read:

297 394.468 Admission and discharge procedures.-

298 (1) Admission and discharge procedures and treatment  
299 policies of the department are governed solely by this part.

300 Such procedures and policies shall not be subject to control by



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301 court procedure rules. The matters within the purview of this  
302 part are deemed to be substantive, not procedural.

303 (2) Discharge planning and procedures for any patient's  
304 release from a receiving facility or treatment facility must  
305 include and document consideration of, at a minimum:

306 (a) Follow-up behavioral health appointments;

307 (b) Information on how to obtain prescribed medications;

308 and

309 (c) Information pertaining to:

310 1. Available living arrangements;

311 2. Transportation; and

312 3. Recovery support opportunities.

313 Section 7. Paragraph (c) of subsection (3) of section  
314 394.9086, Florida Statutes, is amended, a new paragraph (d) is  
315 added to that subsection, and subsection (5) of that section is  
316 amended, to read:

317 394.9086 Commission on Mental Health and Substance Abuse.—

318 (3) MEMBERSHIP; TERM LIMITS; MEETINGS.—

319 (c) The commission shall convene no later than September 1,  
320 2021. The commission shall meet quarterly or upon the call of  
321 the chair. The commission shall hold its meetings in person at  
322 locations throughout the state ~~via teleconference or other~~  
323 ~~electronic means.~~

324 (d) Members of the commission are entitled to receive  
325 reimbursement for per diem and travel expenses pursuant to s.  
326 112.061.

327 (5) REPORTS.—By January 1, 2023 ~~September 1, 2022~~, the  
328 commission shall submit an interim report to the President of  
329 the Senate, the Speaker of the House of Representatives, and the



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330 Governor containing its findings and recommendations on how to  
331 best provide and facilitate mental health and substance abuse  
332 services in the state. The commission shall submit its final  
333 report to the President of the Senate, the Speaker of the House  
334 of Representatives, and the Governor by September 1, 2023.

335 Section 8. Subsection (5) is added to section 397.601,  
336 Florida Statutes, to read:

337 397.601 Voluntary admissions.—

338 (5) A service provider must document that, within 24 hours  
339 of admission, individuals admitted on a voluntary basis have  
340 been provided with the option to authorize the release of  
341 information from their clinical record to the individual's  
342 health care surrogate or proxy, attorney, representative, or  
343 other known emergency contact.

344 Section 9. Section 397.6772, Florida Statutes, is amended  
345 to read:

346 397.6772 Protective custody without consent.—

347 (1) If a person in circumstances which justify protective  
348 custody as described in s. 397.677 fails or refuses to consent  
349 to assistance and a law enforcement officer has determined that  
350 a hospital or a licensed detoxification or addictions receiving  
351 facility is the most appropriate place for the person, the  
352 officer may, after giving due consideration to the expressed  
353 wishes of the person:

354 (a) Take the person to a hospital or to a licensed  
355 detoxification or addictions receiving facility against the  
356 person's will but without using unreasonable force. The officer  
357 shall use the standard form developed by the department pursuant  
358 to s. 397.321 to execute a written report detailing the



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359 circumstances under which the person was taken into custody. The  
360 report must include all emergency contact information for the  
361 person that is readily accessible to the law enforcement  
362 officer, including information available through electronic  
363 databases maintained by the Department of Law Enforcement or by  
364 the Department of Highway Safety and Motor Vehicles. Such  
365 emergency contact information may be used by a hospital or  
366 licensed detoxification or addictions receiving facility only  
367 for the purpose of informing listed emergency contacts of a  
368 patient's whereabouts and shall otherwise remain confidential  
369 and exempt pursuant to s. 119.0712(2)(d). The written report

370 shall be included in the patient's clinical record; or

371 (b) In the case of an adult, detain the person for his or  
372 her own protection in any municipal or county jail or other  
373 appropriate detention facility.

374  
375 Such detention is not to be considered an arrest for any  
376 purpose, and no entry or other record may be made to indicate  
377 that the person has been detained or charged with any crime. The  
378 officer in charge of the detention facility must notify the  
379 nearest appropriate licensed service provider within the first 8  
380 hours after detention that the person has been detained. It is  
381 the duty of the detention facility to arrange, as necessary, for  
382 transportation of the person to an appropriate licensed service  
383 provider with an available bed. Persons taken into protective  
384 custody must be assessed by the attending physician within the  
385 72-hour period and without unnecessary delay, to determine the  
386 need for further services.

387 (2) The law enforcement officer must notify the nearest



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388 relative of a minor in protective custody and must be notified  
389 ~~by the law enforcement officer, as~~ must notify the nearest  
390 relative or other known emergency contact of an adult, unless  
391 the adult requests that there be no notification. The law  
392 enforcement officer must document such notification, and any  
393 attempts at notification, in the written report detailing the  
394 circumstances under which the person was taken into custody as  
395 required under paragraph (1) (a).

396 Section 10. Paragraph (b) of subsection (1) of section  
397 409.972, Florida Statutes, is amended to read:

398 409.972 Mandatory and voluntary enrollment.-

399 (1) The following Medicaid-eligible persons are exempt from  
400 mandatory managed care enrollment required by s. 409.965, and  
401 may voluntarily choose to participate in the managed medical  
402 assistance program:

403 (b) Medicaid recipients residing in residential commitment  
404 facilities operated through the Department of Juvenile Justice  
405 or a treatment facility as defined in s. 394.455(49) ~~s.~~  
406 ~~394.455(48)~~.

407 Section 11. Subsection (7) of section 744.2007, Florida  
408 Statutes, is amended to read:

409 744.2007 Powers and duties.-

410 (7) A public guardian may not commit a ward to a treatment  
411 facility, as defined in s. 394.455(49) ~~s. 394.455(48)~~, without  
412 an involuntary placement proceeding as provided by law.

413 Section 12. This act shall take effect July 1, 2022.

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

415 And the title is amended as follows:

416 Delete everything before the enacting clause



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417 and insert:

418                   A bill to be entitled  
419           An act relating to mental health and substance abuse;  
420           amending s. 394.455, F.S.; defining the term  
421           "telehealth"; amending s. 394.459, F.S.; revising the  
422           conditions under which a patient's communication with  
423           persons outside of a receiving facility may be  
424           restricted; revising the conditions under which a  
425           patient's sealed and unopened incoming or outgoing  
426           correspondence may be restricted; revising the  
427           conditions under which a patient's visitation with  
428           persons outside of a receiving facility may be  
429           restricted; revising the frequency with which the  
430           restriction on a patient's right to receive visitors  
431           must be reviewed; amending s. 394.4599, F.S.;  
432           requiring a receiving facility to notify specified  
433           emergency contacts of individuals who are being  
434           involuntarily held for examination; amending s.  
435           394.4615, F.S.; requiring receiving facilities to  
436           document that an option to authorize the release of  
437           specified information has been provided, within a  
438           specified timeframe, to individuals admitted on a  
439           voluntary basis; amending s. 394.463, F.S.; requiring  
440           that reports issued by law enforcement officers when  
441           delivering a person to a receiving facility contain  
442           certain information related to emergency contacts;  
443           limiting the use of certain information provided;  
444           maintaining the confidential and exempt status of  
445           certain information provided to a receiving facility;





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446 requiring the Department of Children and Families to  
447 receive and maintain reports relating to the  
448 transportation of patients; authorizing receiving  
449 facility discharge examinations to be conducted  
450 through telehealth; requiring a facility administrator  
451 to file a petition for involuntary placement by a  
452 specified time; authorizing a receiving facility to  
453 postpone the release of a patient if certain  
454 requirements are met; prohibiting certain activities  
455 relating to examination and treatment; providing a  
456 criminal penalty; amending s. 394.468, F.S.; requiring  
457 that discharge and planning procedures include and  
458 document the consideration of specified factors and  
459 actions; amending s. 394.9086; modifying meeting  
460 requirements of the Commission on Mental Health and  
461 Substance Abuse; authorizing reimbursement for per  
462 diem and travel expenses; modifying the due date for  
463 the Commission's interim report; amending s. 397.601,  
464 F.S.; requiring service providers to document that an  
465 option to authorize the release of specified  
466 information has been provided, within a specified  
467 timeframe, to individuals admitted on a voluntary  
468 basis; amending s. 397.6772, F.S.; requiring law  
469 enforcement officers to include certain information  
470 relating to emergency contacts in reports relating to  
471 the delivery of a person to a hospital or licensed  
472 detoxification or addictions receiving facility;  
473 limiting the use of certain information provided;  
474 maintaining the confidential and exempt status of



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475 certain information provided to a hospital or licensed  
476 detoxification or addictions receiving facility;  
477 amending ss. 409.972 and 744.2007, F.S.; conforming  
478 cross-references; providing an effective date.