

By Senator Burgess

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1 A bill to be entitled
2 An act relating to mental health and substance abuse;
3 amending s. 394.455, F.S.; defining the term
4 "telehealth"; amending s. 394.459, F.S.; revising the
5 conditions under which a patient's communication with
6 persons outside of a receiving facility may be
7 restricted; revising the conditions under which a
8 patient's sealed and unopened incoming or outgoing
9 correspondence may be restricted; revising the
10 conditions under which a patient's visitation with
11 persons outside of a receiving facility may be
12 restricted; revising the frequency with which the
13 restriction on a patient's right to receive visitors
14 must be reviewed; amending s. 394.4599, F.S.;
15 requiring a receiving facility to notify specified
16 emergency contacts of individuals who are being
17 involuntarily held for examination; amending s.
18 394.4615, F.S.; requiring receiving facilities to
19 document that an option to authorize the release of
20 specified information has been provided, within a
21 specified timeframe, to individuals admitted on a
22 voluntary basis; amending s. 394.463, F.S.; requiring
23 that reports issued by law enforcement officers when
24 delivering a person to a receiving facility contain
25 certain information related to emergency contacts;
26 requiring the Department of Children and Families to
27 receive and maintain reports relating to the
28 transportation of patients; authorizing receiving
29 facility discharge examinations to be conducted

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30 through telehealth; requiring a facility administrator
31 to file a petition for involuntary placement by a
32 specified time; authorizing a receiving facility to
33 postpone the release of a patient if certain
34 requirements are met; requiring that discharge and
35 planning procedures include and document the
36 consideration of specified factors and actions;
37 prohibiting certain activities relating to examination
38 and treatment; providing a criminal penalty; amending
39 s. 397.601, F.S.; requiring service providers to
40 document that an option to authorize the release of
41 specified information has been provided, within a
42 specified timeframe, to individuals admitted on a
43 voluntary basis; amending s. 397.6772, F.S.; requiring
44 law enforcement officers to include certain
45 information relating to emergency contacts in reports
46 relating to the delivery of a person to a receiving
47 facility; amending ss. 409.972 and 744.2007, F.S.;
48 conforming cross-references; providing an effective
49 date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Present subsections (47), (48), and (49) of
54 section 394.455, Florida Statutes, are redesignated as
55 subsections (48), (49), and (50), respectively, and a new
56 subsection (47) is added to that section, to read:

57 394.455 Definitions.—As used in this part, the term:
58 (47) "Telehealth" has the same meaning as provided in s.

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59 456.47.

60 Section 2. Paragraphs (a), (b), and (c) of subsection (5)
61 of section 394.459, Florida Statutes, are amended to read:

62 394.459 Rights of patients.—

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

64 (a) Each person receiving services in a facility providing
65 mental health services under this part has the right to
66 communicate freely and privately with persons outside the
67 facility unless a qualified professional determines ~~it is~~
68 ~~determined~~ that such communication is likely to be harmful to
69 the person or others in a manner directly related to the
70 person's clinical well-being or to the well-being of others.
71 Each facility shall make available as soon as reasonably
72 possible to persons receiving services a telephone that allows
73 for free local calls and access to a long-distance service. A
74 facility is not required to pay the costs of a patient's long-
75 distance calls. The telephone shall be readily accessible to the
76 patient and shall be placed so that the patient may use it to
77 communicate privately and confidentially. The facility may
78 establish reasonable rules for the use of this telephone,
79 provided that the rules do not interfere with a patient's access
80 to a telephone to report abuse pursuant to paragraph (e).

81 (b) Each patient admitted to a facility under the
82 provisions of this part shall be allowed to receive, send, and
83 mail sealed, unopened correspondence; and no patient's incoming
84 or outgoing correspondence shall be opened, delayed, held, or
85 censored by the facility unless a qualified professional
86 determines that such correspondence is likely to be harmful to
87 the patient or others in a manner directly related to the

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88 patient's clinical well-being or to the well-being of others, or
89 there is reason to believe that such correspondence ~~it~~ contains
90 items or substances which may be harmful to the patient or
91 others, in which case the administrator may direct reasonable
92 examination of such mail and may regulate the disposition of
93 such items or substances.

94 (c) Each facility must permit immediate access to any
95 patient, subject to the patient's right to deny or withdraw
96 consent at any time, by the patient's family members, guardian,
97 guardian advocate, representative, Florida statewide or local
98 advocacy council, or attorney, unless a qualified professional
99 determines that such access would be detrimental to the patient
100 in a manner directly related to the patient's clinical well-
101 being. If a patient's right to communicate or to receive
102 visitors is restricted by the facility, written notice of such
103 restriction and the reasons for the restriction shall be served
104 on the patient, the patient's attorney, and the patient's
105 guardian, guardian advocate, or representative; and such
106 restriction shall be recorded on the patient's clinical record
107 with the reasons therefor. The restriction of a patient's right
108 to communicate or to receive visitors shall be reviewed at least
109 every 4 ~~7~~ days. The right to communicate or receive visitors
110 shall not be restricted as a means of punishment. Nothing in
111 this paragraph shall be construed to limit the provisions of
112 paragraph (d).

113 Section 3. Paragraph (b) of subsection (2) of section
114 394.4599, Florida Statutes, is amended to read:

115 394.4599 Notice.—

116 (2) INVOLUNTARY ADMISSION.—

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117 (b) A receiving facility shall give prompt notice of the
118 whereabouts of an individual who is being involuntarily held for
119 examination to the individual's guardian, guardian advocate,
120 health care surrogate or proxy, attorney or representative, or
121 other emergency contact identified through electronic databases
122 pursuant to s. 394.463(2)(a), by telephone or in person within
123 24 hours after the individual's arrival at the facility. Contact
124 attempts shall be documented in the individual's clinical record
125 and shall begin as soon as reasonably possible after the
126 individual's arrival.

127 Section 4. Paragraph (a) of subsection (2) of section
128 394.4615, Florida Statutes, is amended to read:

129 394.4615 Clinical records; confidentiality.—

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

131 (a) The patient or the patient's guardian authorizes the
132 release. The guardian or guardian advocate shall be provided
133 access to the appropriate clinical records of the patient. The
134 patient or the patient's guardian or guardian advocate may
135 authorize the release of information and clinical records to
136 appropriate persons to ensure the continuity of the patient's
137 health care or mental health care. A receiving facility must
138 document that, within 24 hours of admission, individuals
139 admitted on a voluntary basis have been provided with the option
140 to authorize the release of information from their clinical
141 record to the individual's health care surrogate or proxy,
142 attorney, representative, or other known emergency contact.

143 Section 5. Present paragraphs (h) and (i) of subsection (2)
144 of section 394.463, Florida Statutes, are redesignated as
145 paragraphs (i) and (j), respectively, a new paragraph (h) is

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146 added to that subsection, paragraphs (a), (e), (f), and (g) of
147 that subsection are amended, and subsection (5) is added to that
148 section, to read:

149 394.463 Involuntary examination.—

150 (2) INVOLUNTARY EXAMINATION.—

151 (a) An involuntary examination may be initiated by any one
152 of the following means:

153 1. A circuit or county court may enter an ex parte order
154 stating that a person appears to meet the criteria for
155 involuntary examination and specifying the findings on which
156 that conclusion is based. The ex parte order for involuntary
157 examination must be based on written or oral sworn testimony
158 that includes specific facts that support the findings. If other
159 less restrictive means are not available, such as voluntary
160 appearance for outpatient evaluation, a law enforcement officer,
161 or other designated agent of the court, shall take the person
162 into custody and deliver him or her to an appropriate, or the
163 nearest, facility within the designated receiving system
164 pursuant to s. 394.462 for involuntary examination. The order of
165 the court shall be made a part of the patient's clinical record.
166 A fee may not be charged for the filing of an order under this
167 subsection. A facility accepting the patient based on this order
168 must send a copy of the order to the department within 5 working
169 days. The order may be submitted electronically through existing
170 data systems, if available. The order shall be valid only until
171 the person is delivered to the facility or for the period
172 specified in the order itself, whichever comes first. If a time
173 limit is not specified in the order, the order is valid for 7
174 days after the date that the order was signed.

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175 2. A law enforcement officer shall take a person who
176 appears to meet the criteria for involuntary examination into
177 custody and deliver the person or have him or her delivered to
178 an appropriate, or the nearest, facility within the designated
179 receiving system pursuant to s. 394.462 for examination. The
180 officer shall execute a written report detailing the
181 circumstances under which the person was taken into custody,
182 which must be made a part of the patient's clinical record. The
183 report must include all emergency contact information for the
184 person that is readily accessible to the law enforcement
185 officer, including information available through electronic
186 databases maintained by the Department of Law Enforcement or by
187 the Department of Highway Safety and Motor Vehicles. Any
188 facility accepting the patient based on this report must send a
189 copy of the report to the department within 5 working days.

190 3. A physician, a physician assistant, a clinical
191 psychologist, a psychiatric nurse, an advanced practice
192 registered nurse registered under s. 464.0123, a mental health
193 counselor, a marriage and family therapist, or a clinical social
194 worker may execute a certificate stating that he or she has
195 examined a person within the preceding 48 hours and finds that
196 the person appears to meet the criteria for involuntary
197 examination and stating the observations upon which that
198 conclusion is based. If other less restrictive means, such as
199 voluntary appearance for outpatient evaluation, are not
200 available, a law enforcement officer shall take into custody the
201 person named in the certificate and deliver him or her to the
202 appropriate, or nearest, facility within the designated
203 receiving system pursuant to s. 394.462 for involuntary

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204 examination. The law enforcement officer shall execute a written
205 report detailing the circumstances under which the person was
206 taken into custody. The report must include all emergency
207 contact information for the person that is readily accessible to
208 the law enforcement officer, including information available
209 through electronic databases maintained by the Department of Law
210 Enforcement or by the Department of Highway Safety and Motor
211 Vehicles. The report and certificate shall be made a part of the
212 patient's clinical record. Any facility accepting the patient
213 based on this certificate must send a copy of the certificate to
214 the department within 5 working days. The document may be
215 submitted electronically through existing data systems, if
216 applicable.

217
218 When sending the order, report, or certificate to the
219 department, a facility shall, at a minimum, provide information
220 about which action was taken regarding the patient under
221 paragraph (g), which information shall also be made a part of
222 the patient's clinical record.

223 (e) The department shall receive and maintain the copies of
224 ex parte orders, involuntary outpatient services orders issued
225 pursuant to s. 394.4655, involuntary inpatient placement orders
226 issued pursuant to s. 394.467, professional certificates, ~~and~~
227 law enforcement officers' reports, and reports relating to the
228 transportation of patients. These documents shall be considered
229 part of the clinical record, governed by the provisions of s.
230 394.4615. These documents shall be used to prepare annual
231 reports analyzing the data obtained from these documents,
232 without information identifying patients, and shall provide

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233 copies of reports to the department, the President of the
234 Senate, the Speaker of the House of Representatives, and the
235 minority leaders of the Senate and the House of Representatives.

236 (f) A patient shall be examined by a physician or a
237 clinical psychologist, or by a psychiatric nurse performing
238 within the framework of an established protocol with a
239 psychiatrist at a facility without unnecessary delay to
240 determine if the criteria for involuntary services are met.
241 Emergency treatment may be provided upon the order of a
242 physician if the physician determines that such treatment is
243 necessary for the safety of the patient or others. The patient
244 may not be released by the receiving facility or its contractor
245 without the documented approval of a psychiatrist or a clinical
246 psychologist or, if the receiving facility is owned or operated
247 by a hospital or health system, the release may also be approved
248 by a psychiatric nurse performing within the framework of an
249 established protocol with a psychiatrist, or an attending
250 emergency department physician with experience in the diagnosis
251 and treatment of mental illness after completion of an
252 involuntary examination pursuant to this subsection. A
253 psychiatric nurse may not approve the release of a patient if
254 the involuntary examination was initiated by a psychiatrist
255 unless the release is approved by the initiating psychiatrist.
256 The release may be approved through telehealth.

257 (g) The examination period must be for up to 72 hours. For
258 a minor, the examination shall be initiated within 12 hours
259 after the patient's arrival at the facility. Within the
260 examination period ~~or, if the examination period ends on a~~
261 ~~weekend or holiday, no later than the next working day~~

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262 ~~thereafter~~, one of the following actions must be taken, based on
263 the individual needs of the patient:

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

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

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

273 4. A petition for involuntary services shall be filed in
274 the circuit court if inpatient treatment is deemed necessary or
275 with the criminal county court, as defined in s. 394.4655(1), as
276 applicable. When inpatient treatment is deemed necessary, the
277 least restrictive treatment consistent with the optimum
278 improvement of the patient's condition shall be made available.
279 When a petition is to be filed for involuntary outpatient
280 placement, it shall be filed by one of the petitioners specified
281 in s. 394.4655(4)(a). A petition for involuntary inpatient
282 placement shall be filed by the facility administrator. If a
283 patient's 72-hour examination period ends on a weekend or
284 holiday, a petition may be filed no later than the next working
285 day thereafter.

286 (h) If the examination period ends on a weekend or holiday,
287 a receiving facility may postpone release of a patient until the
288 next working day thereafter only if a qualified professional
289 documents that adequate discharge planning and procedures are
290 not possible until the next working day. Discharge planning and

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291 procedures must include and document consideration of the
292 following:

- 293 1. The patient's transportation resources;
294 2. The patient's access to stable living arrangements;
295 3. How assistance in securing needed living arrangements or
296 shelter will be provided to patients at risk of readmission
297 within the 3 weeks immediately following discharge due to
298 homelessness or transient status. The discharging facility must
299 document that, before discharging the patient, it has requested
300 a commitment from a shelter provider that assistance will be
301 rendered;
- 302 4. The availability of assistance in obtaining a timely
303 aftercare appointment for needed services, including
304 continuation of prescribed psychotropic medications. Aftercare
305 appointments for psychotropic medication and case management
306 must be requested to occur not later than 7 days after the
307 expected date of discharge; if the discharge is delayed, the
308 discharging facility must document notification of the delay to
309 the aftercare provider. The discharging facility shall
310 coordinate with the aftercare service provider and document the
311 aftercare planning;
- 312 5. The availability of, and access to, prescribed
313 psychotropic medications in the community. To ensure a patient's
314 safety and provision of continuity of essential psychotropic
315 medications, such prescribed psychotropic medications,
316 prescriptions, multiple partial prescriptions for psychotropic
317 medications, or a combination thereof, must be provided to the
318 patient upon discharge to cover the intervening days until the
319 first scheduled psychotropic medication aftercare appointment,

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320 up to a maximum of 21 calendar days;

321 6. The provision of education and written information about
322 the patient's illness and psychotropic medications, including
323 other prescribed and over-the-counter medications; the common
324 side-effects of any medications prescribed; and any common
325 adverse clinically significant drug-to-drug interactions between
326 that medication and other commonly available prescribed and
327 over-the-counter medications;

328 7. The provision of contact and program information about,
329 and referral to, any community-based peer support services in
330 the community;

331 8. The provision of contact and program information about,
332 and referral to, any needed community resources;

333 9. Referral to substance abuse treatment programs, trauma
334 or abuse recovery-focused programs, or other self-help groups,
335 if indicated by assessments; and

336 10. The provision of information about advance directives,
337 including how to prepare and use them.

338 (5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND
339 TREATMENT; PENALTIES.—

340 (a) A person may not:

341 1. Knowingly furnish false information for the purpose of
342 obtaining emergency or other involuntary admission of another;

343 2. Cause or otherwise secure, or conspire with or assist
344 another to cause or secure, without reason for believing a
345 person to be impaired, any emergency or other involuntary
346 procedure of another person; or

347 3. Cause, or conspire with or assist another to cause, the
348 denial to any person of any right accorded pursuant to this

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349 chapter.

350 (b) A person who violates this subsection commits a
351 misdemeanor of the second degree, punishable as provided in s.
352 775.082 and by a fine not exceeding \$5,000.

353 Section 6. Subsection (5) is added to section 397.601,
354 Florida Statutes, to read:

355 397.601 Voluntary admissions.—

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

362 Section 7. Section 397.6772, Florida Statutes, is amended
363 to read:

364 397.6772 Protective custody without consent.—

365 (1) If a person in circumstances which justify protective
366 custody as described in s. 397.677 fails or refuses to consent
367 to assistance and a law enforcement officer has determined that
368 a hospital or a licensed detoxification or addictions receiving
369 facility is the most appropriate place for the person, the
370 officer may, after giving due consideration to the expressed
371 wishes of the person:

372 (a) Take the person to a hospital or to a licensed
373 detoxification or addictions receiving facility against the
374 person's will but without using unreasonable force. The officer
375 shall use the standard form developed by the department pursuant
376 to s. 397.321 to execute a written report detailing the
377 circumstances under which the person was taken into custody. The

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378 report must include all emergency contact information for the
379 person that is readily accessible to the law enforcement
380 officer, including information available through electronic
381 databases maintained by the Department of Law Enforcement or by
382 the Department of Highway Safety and Motor Vehicles. The written
383 report shall be included in the patient's clinical record; or

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

387
388 Such detention is not to be considered an arrest for any
389 purpose, and no entry or other record may be made to indicate
390 that the person has been detained or charged with any crime. The
391 officer in charge of the detention facility must notify the
392 nearest appropriate licensed service provider within the first 8
393 hours after detention that the person has been detained. It is
394 the duty of the detention facility to arrange, as necessary, for
395 transportation of the person to an appropriate licensed service
396 provider with an available bed. Persons taken into protective
397 custody must be assessed by the attending physician within the
398 72-hour period and without unnecessary delay, to determine the
399 need for further services.

400 (2) The law enforcement officer must notify the nearest
401 relative of a minor in protective custody and ~~must be notified~~
402 by the law enforcement officer, as must notify the nearest
403 relative or other known emergency contact of an adult, unless
404 the adult requests that there be no notification. The law
405 enforcement officer must document such notification, and any
406 attempts at notification, in the written report detailing the

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407 circumstances under which the person is taken into custody
408 required under paragraph (1)(a).

409 Section 8. Paragraph (b) of subsection (1) of section
410 409.972, Florida Statutes, is amended to read:

411 409.972 Mandatory and voluntary enrollment.—

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

416 (b) Medicaid recipients residing in residential commitment
417 facilities operated through the Department of Juvenile Justice
418 or a treatment facility as defined in s. 394.455(49) ~~s.~~
419 ~~394.455(48)~~.

420 Section 9. Subsection (7) of section 744.2007, Florida
421 Statutes, is amended to read:

422 744.2007 Powers and duties.—

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

426 Section 10. This act shall take effect July 1, 2022.