

By the Committee on Children, Families, and Elder Affairs; and
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 contact and
11 visitation with persons outside of a receiving
12 facility may be restricted; revising the frequency
13 with which the restriction on a patient's right to
14 receive visitors must be reviewed; amending s.
15 394.4599, F.S.; requiring a receiving facility to
16 notify specified emergency contacts of individuals who
17 are being involuntarily held for examination; amending
18 s. 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 limiting the use of certain information provided;
27 maintaining the confidential and exempt status of
28 certain information provided to a receiving facility;
29 requiring the Department of Children and Families to

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30 receive and maintain reports relating to the
31 transportation of patients; authorizing receiving
32 facility discharge examinations to be conducted
33 through telehealth; requiring a facility administrator
34 to file a petition for involuntary placement by a
35 specified time; authorizing a receiving facility to
36 postpone the release of a patient if certain
37 requirements are met; prohibiting certain activities
38 relating to examination and treatment; providing a
39 criminal penalty; amending s. 394.468, F.S.; requiring
40 that discharge and planning procedures include and
41 document the consideration of specified factors and
42 actions; amending s. 394.9086; modifying meeting
43 requirements of the Commission on Mental Health and
44 Substance Abuse; authorizing reimbursement for per
45 diem and travel expenses for members of the
46 commission; revising the due date for the commission's
47 interim report; amending s. 397.601, F.S.; requiring
48 service providers to document that an option to
49 authorize the release of specified information has
50 been provided, within a specified timeframe, to
51 individuals admitted on a voluntary basis; amending s.
52 397.6772, F.S.; requiring law enforcement officers to
53 include certain information relating to emergency
54 contacts in reports relating to the delivery of a
55 person to a hospital or licensed detoxification or
56 addictions receiving facility; limiting the use of
57 certain information provided; maintaining the
58 confidential and exempt status of certain information

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59 provided to a hospital or licensed detoxification or
60 addictions receiving facility; amending ss. 409.972
61 and 744.2007, F.S.; conforming cross-references;
62 providing an effective date.

63
64 Be It Enacted by the Legislature of the State of Florida:

65
66 Section 1. Present subsections (47), (48), and (49) of
67 section 394.455, Florida Statutes, are redesignated as
68 subsections (48), (49), and (50), respectively, and a new
69 subsection (47) is added to that section, to read:

70 394.455 Definitions.—As used in this part, the term:
71 (47) "Telehealth" has the same meaning as provided in s.
72 456.47.

73 Section 2. Subsection (5) of section 394.459, Florida
74 Statutes is amended to read:

75 394.459 Rights of patients.—

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

77 (a) Each person receiving services in a facility providing
78 mental health services under this part has the right to
79 communicate freely and privately with persons outside the
80 facility unless a qualified professional determines ~~it is~~
81 ~~determined~~ that such communication is likely to be harmful to
82 the person or others in a manner directly related to the
83 person's clinical well-being, the clinical well-being of other
84 patients, or the general safety of staff. Each facility shall
85 make available as soon as reasonably possible to persons
86 receiving services a telephone that allows for free local calls
87 and access to a long-distance service. A facility is not

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88 required to pay the costs of a patient's long-distance calls.
89 The telephone shall be readily accessible to the patient and
90 shall be placed so that the patient may use it to communicate
91 privately and confidentially. The facility may establish
92 reasonable rules for the use of this telephone, provided that
93 the rules do not interfere with a patient's access to a
94 telephone to report abuse pursuant to paragraph (f) ~~(e)~~.

95 (b) Each patient admitted to a facility under the
96 provisions of this part shall be allowed to receive, send, and
97 mail sealed, unopened correspondence; and no patient's incoming
98 or outgoing correspondence shall be opened, delayed, held, or
99 censored by the facility unless a qualified professional
100 determines that such correspondence is likely to be harmful to
101 the patient or others in a manner directly related to the
102 patient's clinical well-being, the clinical well-being of other
103 patients, or the general safety of staff. If there is reason to
104 believe that such correspondence ~~it~~ contains items or substances
105 which may be harmful to the patient or others, ~~in which case~~ the
106 administrator may direct reasonable examination of such mail and
107 may regulate the disposition of such items or substances.

108 (c) Each facility must permit immediate access to any
109 patient, subject to the patient's right to deny or withdraw
110 consent at any time, by the patient's family members, guardian,
111 guardian advocate, representative, Florida statewide or local
112 advocacy council, or attorney, unless a qualified professional
113 determines that such access would be detrimental to the patient
114 in a manner directly related to the patient's clinical well-
115 being, the clinical well-being of other patients, or the general
116 safety of staff.

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117 (d) If a patient's right to communicate with outside
118 persons; receive, send, or mail sealed, unopened correspondence;
119 or ~~to~~ receive visitors is restricted by the facility, written
120 notice of such restriction and the reasons for the restriction
121 shall be served on the patient, the patient's attorney, and the
122 patient's guardian, guardian advocate, or representative; a
123 qualified professional must document any restriction within 24
124 hours and such restriction shall be recorded on the patient's
125 clinical record with the reasons therefor. The restriction of a
126 patient's right to communicate or to receive visitors shall be
127 reviewed at least every 3 ~~7~~ days. The right to communicate or
128 receive visitors shall not be restricted as a means of
129 punishment. Nothing in this paragraph shall be construed to
130 limit the provisions of paragraph (e)~~(d)~~.

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

136 (f)~~(e)~~ Each patient receiving mental health treatment in
137 any facility shall have ready access to a telephone in order to
138 report an alleged abuse. The facility staff shall orally and in
139 writing inform each patient of the procedure for reporting abuse
140 and shall make every reasonable effort to present the
141 information in a language the patient understands. A written
142 copy of that procedure, including the telephone number of the
143 central abuse hotline and reporting forms, shall be posted in
144 plain view.

145 (g)~~(f)~~ The department shall adopt rules providing a

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146 procedure for reporting abuse. Facility staff shall be required,
147 as a condition of employment, to become familiar with the
148 requirements and procedures for the reporting of abuse.

149 Section 3. Paragraph (b) of subsection (2) of section
150 394.4599, Florida Statutes, is amended to read:

151 394.4599 Notice.—

152 (2) INVOLUNTARY ADMISSION.—

153 (b) A receiving facility shall give prompt notice of the
154 whereabouts of an individual who is being involuntarily held for
155 examination to the individual's guardian, guardian advocate,
156 health care surrogate or proxy, attorney or representative, or
157 other emergency contact identified through electronic databases
158 pursuant to s. 394.463(2) (a), by telephone or in person within
159 24 hours after the individual's arrival at the facility. Contact
160 attempts shall be documented in the individual's clinical record
161 and shall begin as soon as reasonably possible after the
162 individual's arrival.

163 Section 4. Paragraph (a) of subsection (2) of section
164 394.4615, Florida Statutes, is amended to read:

165 394.4615 Clinical records; confidentiality.—

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

167 (a) The patient or the patient's guardian authorizes the
168 release. The guardian or guardian advocate shall be provided
169 access to the appropriate clinical records of the patient. The
170 patient or the patient's guardian or guardian advocate may
171 authorize the release of information and clinical records to
172 appropriate persons to ensure the continuity of the patient's
173 health care or mental health care. A receiving facility must
174 document that, within 24 hours of admission, individuals

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175 admitted on a voluntary basis have been provided with the option
176 to authorize the release of information from their clinical
177 record to the individual's health care surrogate or proxy,
178 attorney, representative, or other known emergency contact.

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

182 394.463 Involuntary examination.—

183 (2) INVOLUNTARY EXAMINATION.—

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

186 1. A circuit or county court may enter an ex parte order
187 stating that a person appears to meet the criteria for
188 involuntary examination and specifying the findings on which
189 that conclusion is based. The ex parte order for involuntary
190 examination must be based on written or oral sworn testimony
191 that includes specific facts that support the findings. If other
192 less restrictive means are not available, such as voluntary
193 appearance for outpatient evaluation, a law enforcement officer,
194 or other designated agent of the court, shall take the person
195 into custody and deliver him or her to an appropriate, or the
196 nearest, facility within the designated receiving system
197 pursuant to s. 394.462 for involuntary examination. The order of
198 the court shall be made a part of the patient's clinical record.
199 A fee may not be charged for the filing of an order under this
200 subsection. A facility accepting the patient based on this order
201 must send a copy of the order to the department within 5 working
202 days. The order may be submitted electronically through existing
203 data systems, if available. The order shall be valid only until

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204 the person is delivered to the facility or for the period
205 specified in the order itself, whichever comes first. If a time
206 limit is not specified in the order, the order is valid for 7
207 days after the date that the order was signed.

208 2. A law enforcement officer shall take a person who
209 appears to meet the criteria for involuntary examination into
210 custody and deliver the person or have him or her delivered to
211 an appropriate, or the nearest, facility within the designated
212 receiving system pursuant to s. 394.462 for examination. The
213 officer shall execute a written report detailing the
214 circumstances under which the person was taken into custody,
215 which must be made a part of the patient's clinical record. The
216 report must include all emergency contact information for the
217 person that is readily accessible to the law enforcement
218 officer, including information available through electronic
219 databases maintained by the Department of Law Enforcement or by
220 the Department of Highway Safety and Motor Vehicles. Such
221 emergency contact information may be used by a receiving
222 facility only for the purpose of informing listed emergency
223 contacts of a patient's whereabouts and shall otherwise remain
224 confidential and exempt pursuant to s. 119.0712(2)(d). Any
225 facility accepting the patient based on this report must send a
226 copy of the report to the department within 5 working days.

227 3. A physician, a physician assistant, a clinical
228 psychologist, a psychiatric nurse, an advanced practice
229 registered nurse registered under s. 464.0123, a mental health
230 counselor, a marriage and family therapist, or a clinical social
231 worker may execute a certificate stating that he or she has
232 examined a person within the preceding 48 hours and finds that

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233 the person appears to meet the criteria for involuntary
234 examination and stating the observations upon which that
235 conclusion is based. If other less restrictive means, such as
236 voluntary appearance for outpatient evaluation, are not
237 available, a law enforcement officer shall take into custody the
238 person named in the certificate and deliver him or her to the
239 appropriate, or nearest, facility within the designated
240 receiving system pursuant to s. 394.462 for involuntary
241 examination. The law enforcement officer shall execute a written
242 report detailing the circumstances under which the person was
243 taken into custody. The report must include all emergency
244 contact information for the person that is readily accessible to
245 the law enforcement officer, including information available
246 through electronic databases maintained by the Department of Law
247 Enforcement or by the Department of Highway Safety and Motor
248 Vehicles. Such emergency contact information may be used by a
249 receiving facility only for the purpose of informing listed
250 emergency contacts of a patient's whereabouts and shall
251 otherwise remain confidential and exempt pursuant to s.
252 119.0712(2)(d). The report and certificate shall be made a part
253 of the patient's clinical record. Any facility accepting the
254 patient based on this certificate must send a copy of the
255 certificate to the department within 5 working days. The
256 document may be submitted electronically through existing data
257 systems, if applicable.

258
259 When sending the order, report, or certificate to the
260 department, a facility shall, at a minimum, provide information
261 about which action was taken regarding the patient under

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262 paragraph (g), which information shall also be made a part of
263 the patient's clinical record.

264 (e) The department shall receive and maintain the copies of
265 ex parte orders, involuntary outpatient services orders issued
266 pursuant to s. 394.4655, involuntary inpatient placement orders
267 issued pursuant to s. 394.467, professional certificates, ~~and~~
268 law enforcement officers' reports, and reports relating to the
269 transportation of patients. These documents shall be considered
270 part of the clinical record, governed by the provisions of s.
271 394.4615. These documents shall be used to prepare annual
272 reports analyzing the data obtained from these documents,
273 without information identifying patients, and shall provide
274 copies of reports to the department, the President of the
275 Senate, the Speaker of the House of Representatives, and the
276 minority leaders of the Senate and the House of Representatives.

277 (f) A patient shall be examined by a physician or a
278 clinical psychologist, or by a psychiatric nurse performing
279 within the framework of an established protocol with a
280 psychiatrist at a facility without unnecessary delay to
281 determine if the criteria for involuntary services are met.
282 Emergency treatment may be provided upon the order of a
283 physician if the physician determines that such treatment is
284 necessary for the safety of the patient or others. The patient
285 may not be released by the receiving facility or its contractor
286 without the documented approval of a psychiatrist or a clinical
287 psychologist or, if the receiving facility is owned or operated
288 by a hospital or health system, the release may also be approved
289 by a psychiatric nurse performing within the framework of an
290 established protocol with a psychiatrist, or an attending

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291 emergency department physician with experience in the diagnosis
292 and treatment of mental illness after completion of an
293 involuntary examination pursuant to this subsection. A
294 psychiatric nurse may not approve the release of a patient if
295 the involuntary examination was initiated by a psychiatrist
296 unless the release is approved by the initiating psychiatrist.
297 The release may be approved through telehealth.

298 (g) The examination period must be for up to 72 hours. For
299 a minor, the examination shall be initiated within 12 hours
300 after the patient's arrival at the facility. Within the
301 examination period ~~or, if the examination period ends on a~~
302 ~~weekend or holiday, no later than the next working day~~
303 ~~thereafter~~, one of the following actions must be taken, based on
304 the individual needs of the patient:

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

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

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

314 4. A petition for involuntary services shall be filed in
315 the circuit court if inpatient treatment is deemed necessary or
316 with the criminal county court, as defined in s. 394.4655(1), as
317 applicable. When inpatient treatment is deemed necessary, the
318 least restrictive treatment consistent with the optimum
319 improvement of the patient's condition shall be made available.

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320 When a petition is to be filed for involuntary outpatient
321 placement, it shall be filed by one of the petitioners specified
322 in s. 394.4655(4)(a). A petition for involuntary inpatient
323 placement shall be filed by the facility administrator. If a
324 patient's 72-hour examination period ends on a weekend or
325 holiday, and the receiving facility:

326 a. Intends to file a petition for involuntary services,
327 such patient may be held at a receiving facility through the
328 next working day thereafter and such petition for involuntary
329 services must be filed no later than such date. If the receiving
330 facility fails to file a petition for involuntary services at
331 the close of the next working day, the patient shall be released
332 from the receiving facility.

333 b. Does not intend to file a petition for involuntary
334 services, a receiving facility may postpone release of a patient
335 until the next working day thereafter only if a qualified
336 professional documents that adequate discharge planning and
337 procedures in accordance with s. 394.468 are not possible until
338 the next working day.

339 (5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND
340 TREATMENT; PENALTIES.-

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

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

344 2. Cause or otherwise secure, or conspire with or assist
345 another to cause or secure, any emergency or other involuntary
346 procedure of another person under false pretenses; 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 first degree, punishable as provided in s.
352 775.082 and by a fine not exceeding \$5,000.

353 Section 6. Section 394.468, Florida Statutes, is amended to
354 read:

355 394.468 Admission and discharge procedures.—

356 (1) Admission and discharge procedures and treatment
357 policies of the department are governed solely by this part.
358 Such procedures and policies shall not be subject to control by
359 court procedure rules. The matters within the purview of this
360 part are deemed to be substantive, not procedural.

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

364 (a) Follow-up behavioral health appointments;

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

366 and

367 (c) Information pertaining to:

368 1. Available living arrangements;

369 2. Transportation; and

370 3. Recovery support opportunities.

371 Section 7. Paragraph (c) of subsection (3) of section
372 394.9086, Florida Statutes, is amended, a new paragraph (d) is
373 added to that subsection, and subsection (5) of that section is
374 amended, to read:

375 394.9086 Commission on Mental Health and Substance Abuse.—

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

377 (c) The commission shall convene no later than September 1,

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378 2021. The commission shall meet quarterly or upon the call of
379 the chair. The commission shall hold its meetings in person at
380 locations throughout the state ~~via teleconference or other~~
381 ~~electronic means.~~

382 (d) Members of the commission are entitled to receive
383 reimbursement for per diem and travel expenses pursuant to s.
384 112.061.

385 (5) REPORTS.—By January 1, 2023 ~~September 1, 2022~~, the
386 commission shall submit an interim report to the President of
387 the Senate, the Speaker of the House of Representatives, and the
388 Governor containing its findings and recommendations on how to
389 best provide and facilitate mental health and substance abuse
390 services in the state. The commission shall submit its final
391 report to the President of the Senate, the Speaker of the House
392 of Representatives, and the Governor by September 1, 2023.

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

395 397.601 Voluntary admissions.—

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

402 Section 9. Section 397.6772, Florida Statutes, is amended
403 to read:

404 397.6772 Protective custody without consent.—

405 (1) If a person in circumstances which justify protective
406 custody as described in s. 397.677 fails or refuses to consent

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407 to assistance and a law enforcement officer has determined that
408 a hospital or a licensed detoxification or addictions receiving
409 facility is the most appropriate place for the person, the
410 officer may, after giving due consideration to the expressed
411 wishes of the person:

412 (a) Take the person to a hospital or to a licensed
413 detoxification or addictions receiving facility against the
414 person's will but without using unreasonable force. The officer
415 shall use the standard form developed by the department pursuant
416 to s. 397.321 to execute a written report detailing the
417 circumstances under which the person was taken into custody. The
418 report must include all emergency contact information for the
419 person that is readily accessible to the law enforcement
420 officer, including information available through electronic
421 databases maintained by the Department of Law Enforcement or by
422 the Department of Highway Safety and Motor Vehicles. Such
423 emergency contact information may be used by a hospital or
424 licensed detoxification or addictions receiving facility only
425 for the purpose of informing listed emergency contacts of a
426 patient's whereabouts and shall otherwise remain confidential
427 and exempt pursuant to s. 119.0712(2)(d). The written report
428 shall be included in the patient's clinical record; or

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

432
433 Such detention is not to be considered an arrest for any
434 purpose, and no entry or other record may be made to indicate
435 that the person has been detained or charged with any crime. The

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436 officer in charge of the detention facility must notify the
437 nearest appropriate licensed service provider within the first 8
438 hours after detention that the person has been detained. It is
439 the duty of the detention facility to arrange, as necessary, for
440 transportation of the person to an appropriate licensed service
441 provider with an available bed. Persons taken into protective
442 custody must be assessed by the attending physician within the
443 72-hour period and without unnecessary delay, to determine the
444 need for further services.

445 (2) The law enforcement officer must notify the nearest
446 relative of a minor in protective custody and ~~must be notified~~
447 ~~by the law enforcement officer, as~~ must notify the nearest
448 relative or other known emergency contact of an adult, unless
449 the adult requests that there be no notification. The law
450 enforcement officer must document such notification, and any
451 attempts at notification, in the written report detailing the
452 circumstances under which the person was taken into custody as
453 required under paragraph (1) (a).

454 Section 10. Paragraph (b) of subsection (1) of section
455 409.972, Florida Statutes, is amended to read:

456 409.972 Mandatory and voluntary enrollment.—

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

461 (b) Medicaid recipients residing in residential commitment
462 facilities operated through the Department of Juvenile Justice
463 or a treatment facility as defined in s. 394.455(49) ~~s.~~
464 ~~394.455(48)~~.

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

467 744.2007 Powers and duties.—

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

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