

By the Committees on Appropriations; and Children, Families, and Elder Affairs; and Senators Burgess and Rouson

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1 A bill to be entitled
2 An act relating to mental health and substance abuse;
3 amending s. 119.0712, F.S.; authorizing emergency
4 contact information to be released to certain
5 entities; amending s. 394.455, F.S.; defining the term
6 "telehealth"; amending s. 394.459, F.S.; revising the
7 conditions under which a patient's communication with
8 persons outside of a receiving facility may be
9 restricted; revising the conditions under which a
10 patient's sealed and unopened incoming or outgoing
11 correspondence may be restricted; revising the
12 conditions under which a patient's contact and
13 visitation with persons outside of a receiving
14 facility may be restricted; revising the frequency
15 with which the restriction on a patient's right to
16 receive visitors must be reviewed; amending s.
17 394.4599, F.S.; requiring a receiving facility to
18 notify specified emergency contacts of individuals who
19 are being involuntarily held for examination; amending
20 s. 394.4615, F.S.; requiring receiving facilities to
21 document that an option to authorize the release of
22 specified information has been provided, within a
23 specified timeframe, to individuals admitted on a
24 voluntary basis; amending s. 394.463, F.S.; requiring
25 that reports issued by law enforcement officers when
26 delivering a person to a receiving facility contain
27 certain information related to emergency contacts;
28 limiting the use of certain information provided;
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; revising a prohibition on
32 releasing a patient without certain documented
33 approval; authorizing receiving facility discharge
34 examinations to be conducted through telehealth;
35 requiring a facility administrator to file a petition
36 for involuntary placement by a specified time;
37 authorizing a receiving facility to postpone the
38 release of a patient if certain requirements are met;
39 prohibiting certain activities relating to examination
40 and treatment; providing a criminal penalty; amending
41 s. 394.468, F.S.; requiring that discharge and
42 planning procedures include and document the
43 consideration of specified factors and actions;
44 amending s. 394.9086; modifying meeting requirements
45 of the Commission on Mental Health and Substance
46 Abuse; authorizing reimbursement for per diem and
47 travel expenses for members of the commission;
48 authorizing the commission to access certain
49 information or records; revising the due date for the
50 commission's interim report; amending s. 397.601,
51 F.S.; requiring service providers to document that an
52 option to authorize the release of specified
53 information has been provided, within a specified
54 timeframe, to individuals admitted on a voluntary
55 basis; amending s. 397.6772, F.S.; requiring law
56 enforcement officers to include certain information
57 relating to emergency contacts in reports relating to
58 the delivery of a person to a hospital or licensed

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59 detoxification or addictions receiving facility;
60 limiting the use of certain information provided;
61 amending ss. 409.972 and 744.2007, F.S.; conforming
62 cross-references; providing an effective date.
63

64 Be It Enacted by the Legislature of the State of Florida:
65

66 Section 1. Paragraph (d) of subsection (2) of section
67 119.0712, Florida Statutes, is amended to read:

68 119.0712 Executive branch agency-specific exemptions from
69 inspection or copying of public records.—

70 (2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

71 (d)1. Emergency contact information contained in a motor
72 vehicle record is confidential and exempt from s. 119.07(1) and
73 s. 24(a), Art. I of the State Constitution.

74 2. Without the express consent of the person to whom such
75 emergency contact information applies, the emergency contact
76 information contained in a motor vehicle record may be released
77 only to:

78 a. Law enforcement agencies for purposes of contacting
79 those listed in the event of an emergency.

80 b. A receiving facility, hospital, or licensed
81 detoxification or addictions receiving facility pursuant to s.
82 394.463(2)(a) or s. 397.6772(1)(a) for the sole purpose of
83 informing a patient's emergency contacts of the patient's
84 whereabouts.

85 Section 2. Present subsections (47), (48), and (49) of
86 section 394.455, Florida Statutes, are redesignated as
87 subsections (48), (49), and (50), respectively, and a new

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88 subsection (47) is added to that section, to read:

89 394.455 Definitions.—As used in this part, the term:

90 (47) "Telehealth" has the same meaning as provided in s.
91 456.47.

92 Section 3. Subsection (5) of section 394.459, Florida
93 Statutes is amended to read:

94 394.459 Rights of patients.—

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

96 (a) Each person receiving services in a facility providing
97 mental health services under this part has the right to
98 communicate freely and privately with persons outside the
99 facility unless a qualified professional determines ~~it is~~
100 ~~determined~~ that such communication is likely to be harmful to
101 the person or others in a manner directly related to the
102 person's clinical well-being, the clinical well-being of other
103 patients, or the general safety of staff. Each facility shall
104 make available as soon as reasonably possible to persons
105 receiving services a telephone that allows for free local calls
106 and access to a long-distance service. A facility is not
107 required to pay the costs of a patient's long-distance calls.
108 The telephone shall be readily accessible to the patient and
109 shall be placed so that the patient may use it to communicate
110 privately and confidentially. The facility may establish
111 reasonable rules for the use of this telephone, provided that
112 the rules do not interfere with a patient's access to a
113 telephone to report abuse pursuant to paragraph (f) ~~(e)~~.

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

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117 or outgoing correspondence shall be opened, delayed, held, or
118 censored by the facility unless a qualified professional
119 determines that such correspondence is likely to be harmful to
120 the patient or others in a manner directly related to the
121 patient's clinical well-being, the clinical well-being of other
122 patients, or the general safety of staff. If there is reason to
123 believe that such correspondence ~~it~~ contains items or substances
124 which may be harmful to the patient or others, ~~in which case~~ the
125 administrator may direct reasonable examination of such mail and
126 may regulate the disposition of such items or substances.

127 (c) Each facility must permit immediate access to any
128 patient, subject to the patient's right to deny or withdraw
129 consent at any time, by the patient's family members, guardian,
130 guardian advocate, representative, Florida statewide or local
131 advocacy council, or attorney, unless a qualified professional
132 determines that such access would be detrimental to the patient
133 in a manner directly related to the patient's clinical well-
134 being, the clinical well-being of other patients, or the general
135 safety of staff.

136 (d) If a patient's right to communicate with outside
137 persons; receive, send, or mail sealed, unopened correspondence;
138 or ~~to~~ receive visitors is restricted by the facility, written
139 notice of such restriction and the reasons for the restriction
140 shall be served on the patient, the patient's attorney, and the
141 patient's guardian, guardian advocate, or representative; a
142 qualified professional must document any restriction within 24
143 hours and such restriction shall be recorded on the patient's
144 clinical record with the reasons therefor. The restriction of a
145 patient's right to communicate or to receive visitors shall be

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

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

155 (f) ~~(e)~~ Each patient receiving mental health treatment in
156 any facility shall have ready access to a telephone in order to
157 report an alleged abuse. The facility staff shall orally and in
158 writing inform each patient of the procedure for reporting abuse
159 and shall make every reasonable effort to present the
160 information in a language the patient understands. A written
161 copy of that procedure, including the telephone number of the
162 central abuse hotline and reporting forms, shall be posted in
163 plain view.

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

168 Section 4. Paragraph (b) of subsection (2) of section
169 394.4599, Florida Statutes, is amended to read:

170 394.4599 Notice.—

171 (2) INVOLUNTARY ADMISSION.—

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

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175 health care surrogate or proxy, attorney or representative, or
176 other emergency contact identified through electronic databases
177 pursuant to s. 394.463(2)(a), by telephone or in person within
178 24 hours after the individual's arrival at the facility. Contact
179 attempts shall be documented in the individual's clinical record
180 and shall begin as soon as reasonably possible after the
181 individual's arrival.

182 Section 5. Paragraph (a) of subsection (2) of section
183 394.4615, Florida Statutes, is amended to read:

184 394.4615 Clinical records; confidentiality.—

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

186 (a) The patient or the patient's guardian authorizes the
187 release. The guardian or guardian advocate shall be provided
188 access to the appropriate clinical records of the patient. The
189 patient or the patient's guardian or guardian advocate may
190 authorize the release of information and clinical records to
191 appropriate persons to ensure the continuity of the patient's
192 health care or mental health care. A receiving facility must
193 document that, within 24 hours of admission, individuals
194 admitted on a voluntary basis have been provided with the option
195 to authorize the release of information from their clinical
196 record to the individual's health care surrogate or proxy,
197 attorney, representative, or other known emergency contact.

198 Section 6. Paragraphs (a), (e), (f), and (g) of subsection
199 (2) of section 394.463, Florida Statutes, are amended, and
200 subsection (5) is added to that section, to read:

201 394.463 Involuntary examination.—

202 (2) INVOLUNTARY EXAMINATION.—

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

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204 of the following means:

205 1. A circuit or county court may enter an ex parte order
206 stating that a person appears to meet the criteria for
207 involuntary examination and specifying the findings on which
208 that conclusion is based. The ex parte order for involuntary
209 examination must be based on written or oral sworn testimony
210 that includes specific facts that support the findings. If other
211 less restrictive means are not available, such as voluntary
212 appearance for outpatient evaluation, a law enforcement officer,
213 or other designated agent of the court, shall take the person
214 into custody and deliver him or her to an appropriate, or the
215 nearest, facility within the designated receiving system
216 pursuant to s. 394.462 for involuntary examination. The order of
217 the court shall be made a part of the patient's clinical record.
218 A fee may not be charged for the filing of an order under this
219 subsection. A facility accepting the patient based on this order
220 must send a copy of the order to the department within 5 working
221 days. The order may be submitted electronically through existing
222 data systems, if available. The order shall be valid only until
223 the person is delivered to the facility or for the period
224 specified in the order itself, whichever comes first. If a time
225 limit is not specified in the order, the order is valid for 7
226 days after the date that the order was signed.

227 2. A law enforcement officer shall take a person who
228 appears to meet the criteria for involuntary examination into
229 custody and deliver the person or have him or her delivered to
230 an appropriate, or the nearest, facility within the designated
231 receiving system pursuant to s. 394.462 for examination. The
232 officer shall execute a written report detailing the

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233 circumstances under which the person was taken into custody,
234 which must be made a part of the patient's clinical record. The
235 report must include all emergency contact information for the
236 person that is readily accessible to the law enforcement
237 officer, including information available through electronic
238 databases maintained by the Department of Law Enforcement or by
239 the Department of Highway Safety and Motor Vehicles. Such
240 emergency contact information may be used by a receiving
241 facility only for the purpose of informing listed emergency
242 contacts of a patient's whereabouts pursuant to s.
243 119.0712(2)(d). Any facility accepting the patient based on this
244 report must send a copy of the report to the department within 5
245 working days.

246 3. A physician, a physician assistant, a clinical
247 psychologist, a psychiatric nurse, an advanced practice
248 registered nurse registered under s. 464.0123, a mental health
249 counselor, a marriage and family therapist, or a clinical social
250 worker may execute a certificate stating that he or she has
251 examined a person within the preceding 48 hours and finds that
252 the person appears to meet the criteria for involuntary
253 examination and stating the observations upon which that
254 conclusion is based. If other less restrictive means, such as
255 voluntary appearance for outpatient evaluation, are not
256 available, a law enforcement officer shall take into custody the
257 person named in the certificate and deliver him or her to the
258 appropriate, or nearest, facility within the designated
259 receiving system pursuant to s. 394.462 for involuntary
260 examination. The law enforcement officer shall execute a written
261 report detailing the circumstances under which the person was

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262 taken into custody. The report must include all emergency
263 contact information for the person that is readily accessible to
264 the law enforcement officer, including information available
265 through electronic databases maintained by the Department of Law
266 Enforcement or by the Department of Highway Safety and Motor
267 Vehicles. Such emergency contact information may be used by a
268 receiving facility only for the purpose of informing listed
269 emergency contacts of a patient's whereabouts pursuant to s.
270 119.0712(2)(d). The report and certificate shall be made a part
271 of the patient's clinical record. Any facility accepting the
272 patient based on this certificate must send a copy of the
273 certificate to the department within 5 working days. The
274 document may be submitted electronically through existing data
275 systems, if applicable.

276

277 When sending the order, report, or certificate to the
278 department, a facility shall, at a minimum, provide information
279 about which action was taken regarding the patient under
280 paragraph (g), which information shall also be made a part of
281 the patient's clinical record.

282 (e) The department shall receive and maintain the copies of
283 ex parte orders, involuntary outpatient services orders issued
284 pursuant to s. 394.4655, involuntary inpatient placement orders
285 issued pursuant to s. 394.467, professional certificates, ~~and~~
286 law enforcement officers' reports, and reports relating to the
287 transportation of patients. These documents shall be considered
288 part of the clinical record, governed by the provisions of s.
289 394.4615. These documents shall be used to prepare annual
290 reports analyzing the data obtained from these documents,

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291 without information identifying patients, and shall provide
292 copies of reports to the department, the President of the
293 Senate, the Speaker of the House of Representatives, and the
294 minority leaders of the Senate and the House of Representatives.

295 (f) A patient shall be examined by a physician or a
296 clinical psychologist, or by a psychiatric nurse performing
297 within the framework of an established protocol with a
298 psychiatrist at a facility without unnecessary delay to
299 determine if the criteria for involuntary services are met.
300 Emergency treatment may be provided upon the order of a
301 physician if the physician determines that such treatment is
302 necessary for the safety of the patient or others. The patient
303 may not be released by the receiving facility or its contractor
304 without the documented approval of a psychiatrist or a clinical
305 psychologist or, if the receiving facility is owned or operated
306 by a hospital, ~~or~~ health system, or nationally accredited
307 community mental health center, the release may also be approved
308 by a psychiatric nurse performing within the framework of an
309 established protocol with a psychiatrist, or an attending
310 emergency department physician with experience in the diagnosis
311 and treatment of mental illness after completion of an
312 involuntary examination pursuant to this subsection. A
313 psychiatric nurse may not approve the release of a patient if
314 the involuntary examination was initiated by a psychiatrist
315 unless the release is approved by the initiating psychiatrist.
316 The release may be approved through telehealth.

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

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320 examination period ~~or, if the examination period ends on a~~
321 ~~weekend or holiday, no later than the next working day~~
322 ~~thereafter~~, one of the following actions must be taken, based on
323 the individual needs of the patient:

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

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

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

333 4. A petition for involuntary services shall be filed in
334 the circuit court if inpatient treatment is deemed necessary or
335 with the criminal county court, as defined in s. 394.4655(1), as
336 applicable. When inpatient treatment is deemed necessary, the
337 least restrictive treatment consistent with the optimum
338 improvement of the patient's condition shall be made available.
339 When a petition is to be filed for involuntary outpatient
340 placement, it shall be filed by one of the petitioners specified
341 in s. 394.4655(4) (a). A petition for involuntary inpatient
342 placement shall be filed by the facility administrator. If a
343 patient's 72-hour examination period ends on a weekend or
344 holiday, and the receiving facility:

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

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349 facility fails to file a petition for involuntary services at
350 the close of the next working day, the patient shall be released
351 from the receiving facility following approval pursuant to
352 paragraph (f).

353 b. Does not intend to file a petition for involuntary
354 services, a receiving facility may postpone release of a patient
355 until the next working day thereafter only if a qualified
356 professional documents that adequate discharge planning and
357 procedures in accordance with s. 394.468, and approval pursuant
358 to paragraph (f), are not possible until the next working day.

359 (5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND
360 TREATMENT; PENALTIES.-

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

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

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

367 3. Cause, or conspire with or assist another to cause,
368 without lawful justification, the denial to any person of any
369 right accorded pursuant to this chapter.

370 (b) A person who violates this subsection commits a
371 misdemeanor of the first degree, punishable as provided in s.
372 775.082 and by a fine not exceeding \$5,000.

373 Section 7. Section 394.468, Florida Statutes, is amended to
374 read:

375 394.468 Admission and discharge procedures.-

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

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378 Such procedures and policies shall not be subject to control by
379 court procedure rules. The matters within the purview of this
380 part are deemed to be substantive, not procedural.

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

384 (a) Follow-up behavioral health appointments;

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

386 and

387 (c) Information pertaining to:

388 1. Available living arrangements;

389 2. Transportation; and

390 3. Recovery support opportunities.

391 Section 8. Paragraph (c) of subsection (3) and subsection
392 (5) of section 394.9086, Florida Statutes, are amended, and
393 paragraphs (d) and (e) are added to subsection (3) of that
394 section, to read:

395 394.9086 Commission on Mental Health and Substance Abuse.—

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

397 (c) The commission shall convene no later than September 1,
398 2021. The commission shall meet quarterly or upon the call of
399 the chair. The commission may ~~shall~~ hold its meetings in person
400 at locations throughout the state or via teleconference or other
401 electronic means.

402 (d) Members of the commission are entitled to receive
403 reimbursement for per diem and travel expenses pursuant to s.
404 112.061.

405 (e) Notwithstanding any other law, the commission may
406 request and shall be provided with access to any information or

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407 records, including exempt and confidential information or
408 records, which are necessary for the commission to carry out its
409 duties. Information or records obtained by the commission which
410 are otherwise exempt or confidential and exempt shall retain
411 such exempt or confidential and exempt status, and the
412 commission may not disclose such information or records.

413 (5) REPORTS.—By January 1, 2023 ~~September 1, 2022~~, the
414 commission shall submit an interim report to the President of
415 the Senate, the Speaker of the House of Representatives, and the
416 Governor containing its findings and recommendations on how to
417 best provide and facilitate mental health and substance abuse
418 services in the state. The commission shall submit its final
419 report to the President of the Senate, the Speaker of the House
420 of Representatives, and the Governor by September 1, 2023.

421 Section 9. Subsection (5) is added to section 397.601,
422 Florida Statutes, to read:

423 397.601 Voluntary admissions.—

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

430 Section 10. Section 397.6772, Florida Statutes, is amended
431 to read:

432 397.6772 Protective custody without consent.—

433 (1) If a person in circumstances which justify protective
434 custody as described in s. 397.677 fails or refuses to consent
435 to assistance and a law enforcement officer has determined that

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436 a hospital or a licensed detoxification or addictions receiving
437 facility is the most appropriate place for the person, the
438 officer may, after giving due consideration to the expressed
439 wishes of the person:

440 (a) Take the person to a hospital or to a licensed
441 detoxification or addictions receiving facility against the
442 person's will but without using unreasonable force. The officer
443 shall use the standard form developed by the department pursuant
444 to s. 397.321 to execute a written report detailing the
445 circumstances under which the person was taken into custody. The
446 report must include all emergency contact information for the
447 person that is readily accessible to the law enforcement
448 officer, including information available through electronic
449 databases maintained by the Department of Law Enforcement or by
450 the Department of Highway Safety and Motor Vehicles. Such
451 emergency contact information may be used by a hospital or
452 licensed detoxification or addictions receiving facility only
453 for the purpose of informing listed emergency contacts of a
454 patient's whereabouts pursuant to s. 119.0712(2)(d). The written
455 report shall be included in the patient's clinical record; or

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

459
460 Such detention is not to be considered an arrest for any
461 purpose, and no entry or other record may be made to indicate
462 that the person has been detained or charged with any crime. The
463 officer in charge of the detention facility must notify the
464 nearest appropriate licensed service provider within the first 8

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465 hours after detention that the person has been detained. It is
466 the duty of the detention facility to arrange, as necessary, for
467 transportation of the person to an appropriate licensed service
468 provider with an available bed. Persons taken into protective
469 custody must be assessed by the attending physician within the
470 72-hour period and without unnecessary delay, to determine the
471 need for further services.

472 (2) The law enforcement officer must notify the nearest
473 relative of a minor in protective custody and ~~must be notified~~
474 ~~by the law enforcement officer,~~ as must notify the nearest
475 relative or other known emergency contact of an adult, unless
476 the adult requests that there be no notification. The law
477 enforcement officer must document such notification, and any
478 attempts at notification, in the written report detailing the
479 circumstances under which the person was taken into custody as
480 required under paragraph (1) (a).

481 Section 11. Paragraph (b) of subsection (1) of section
482 409.972, Florida Statutes, is amended to read:

483 409.972 Mandatory and voluntary enrollment.—

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

488 (b) Medicaid recipients residing in residential commitment
489 facilities operated through the Department of Juvenile Justice
490 or a treatment facility as defined in s. 394.455(49) ~~s.~~
491 ~~394.455(48)~~.

492 Section 12. Subsection (7) of section 744.2007, Florida
493 Statutes, is amended to read:

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494 744.2007 Powers and duties.—

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

498 Section 13. This act shall take effect July 1, 2022.