

26 receiving facility; maintaining the confidential and
27 exempt status of such information; requiring the
28 Department of Children and Families to receive and
29 maintain reports relating to the transportation of
30 patients; revising a prohibition on releasing a
31 patient without certain documented approval;
32 authorizing a receiving facility to postpone the
33 release of a patient if certain requirements are met;
34 prohibiting certain activities relating to examination
35 and treatment; providing a criminal penalty; amending
36 s. 394.468, F.S.; requiring that discharge planning
37 and procedures include and document the consideration
38 of specified factors and actions; amending s.
39 394.9086; revising meeting requirements of the
40 Commission on Mental Health and Substance Abuse;
41 authorizing reimbursement for per diem and travel
42 expenses for members of the commission; authorizing
43 the commission to access certain information or
44 records; extending the date by which the commission
45 must submit a certain interim report to the
46 Legislature and Governor; amending s. 397.601, F.S.;
47 requiring service providers to document that an option
48 to authorize the release of specified information has
49 been provided, within a specified timeframe, to
50 individuals admitted on a voluntary basis; amending s.

51 397.6772, F.S.; requiring law enforcement officers to
 52 include certain information regarding emergency
 53 contacts in reports relating to the delivery of a
 54 person to a hospital or licensed detoxification or
 55 addictions receiving facility; limiting the use of
 56 certain information provided to a hospital or licensed
 57 detoxification or addictions receiving facility;
 58 maintaining the confidential and exempt status of such
 59 information; requiring a law enforcement officer to
 60 provide certain notification and document such
 61 notification in a certain report; providing an
 62 effective date.

63

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

65

66 Section 1. Paragraphs (d), (e), and (f) of subsection (5)
 67 of section 394.459, Florida Statutes, are redesignated as
 68 paragraphs (e), (f), and (g), respectively, and paragraphs (a),
 69 (b), and (c) of that subsection are amended to read:

70

394.459 Rights of patients.—

71

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

72

(a) Each person receiving services in a facility providing
 73 mental health services under this part has the right to
 74 communicate freely and privately with persons outside the
 75 facility unless a qualified professional determines ~~it is~~

76 ~~determined~~ that such communication is likely to be harmful to
77 the person or others in a manner directly related to the
78 person's clinical well-being, the clinical well-being of other
79 patients, or the general safety of facility staff. Each facility
80 shall make available as soon as reasonably possible to persons
81 receiving services a telephone that allows for free local calls
82 and access to a long-distance service. A facility is not
83 required to pay the costs of a patient's long-distance calls.
84 The telephone shall be readily accessible to the patient and
85 shall be placed so that the patient may use it to communicate
86 privately and confidentially. The facility may establish
87 reasonable rules for the use of this telephone, provided that
88 the rules do not interfere with a patient's access to a
89 telephone to report abuse pursuant to paragraph (f) ~~(e)~~.

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

101 ~~which case~~ the facility administrator may direct reasonable
102 examination of such correspondence ~~mail~~ and may regulate the
103 disposition of such items or substances.

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

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

126 | limit the provisions of paragraph (e) ~~(d)~~.

127 | Section 2. Paragraph (b) of subsection (2) of section
128 | 394.4599, Florida Statutes, is amended to read:

129 | 394.4599 Notice.—

130 | (2) INVOLUNTARY ADMISSION.—

131 | (b) A receiving facility shall give prompt notice of the
132 | whereabouts of an individual who is being involuntarily held for
133 | examination to the individual's guardian, guardian advocate,
134 | health care surrogate or proxy, attorney or representative, or
135 | other emergency contact identified through electronic databases
136 | pursuant to s. 394.463(2) (a) by telephone or in person within 24
137 | hours after the individual's arrival at the facility. Contact
138 | attempts shall be documented in the individual's clinical record
139 | and shall begin as soon as reasonably possible after the
140 | individual's arrival.

141 | Section 3. Paragraph (a) of subsection (2) of section
142 | 394.4615, Florida Statutes, is amended to read:

143 | 394.4615 Clinical records; confidentiality.—

144 | (2) The clinical record shall be released when:

145 | (a) The patient or the patient's guardian authorizes the
146 | release. The guardian or guardian advocate shall be provided
147 | access to the appropriate clinical records of the patient. The
148 | patient or the patient's guardian or guardian advocate may
149 | authorize the release of information and clinical records to
150 | appropriate persons to ensure the continuity of the patient's

151 health care or mental health care. A receiving facility must
 152 document that, within 24 hours after admission, an individual
 153 admitted on a voluntary basis has been provided with the option
 154 to authorize the release of information from his or her clinical
 155 record to the individual's health care surrogate or proxy,
 156 attorney, representative, or other known emergency contact.

157 Section 4. Paragraphs (a), (e), (f), and (g) of subsection
 158 (2) of section 394.463, Florida Statutes, are amended, and
 159 subsection (5) is added to that section, to read:

160 394.463 Involuntary examination.—

161 (2) INVOLUNTARY EXAMINATION.—

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

164 1. A circuit or county court may enter an ex parte order
 165 stating that a person appears to meet the criteria for
 166 involuntary examination and specifying the findings on which
 167 that conclusion is based. The ex parte order for involuntary
 168 examination must be based on written or oral sworn testimony
 169 that includes specific facts that support the findings. If other
 170 less restrictive means are not available, such as voluntary
 171 appearance for outpatient evaluation, a law enforcement officer,
 172 or other designated agent of the court, shall take the person
 173 into custody and deliver him or her to an appropriate, or the
 174 nearest, facility within the designated receiving system
 175 pursuant to s. 394.462 for involuntary examination. The order of

176 the court shall be made a part of the patient's clinical record.
177 A fee may not be charged for the filing of an order under this
178 subsection. A facility accepting the patient based on this order
179 must send a copy of the order to the department within 5 working
180 days. The order may be submitted electronically through existing
181 data systems, if available. The order shall be valid only until
182 the person is delivered to the facility or for the period
183 specified in the order itself, whichever comes first. If a time
184 limit is not specified in the order, the order is valid for 7
185 days after the date that the order was signed.

186 2. A law enforcement officer shall take a person who
187 appears to meet the criteria for involuntary examination into
188 custody and deliver the person or have him or her delivered to
189 an appropriate, or the nearest, facility within the designated
190 receiving system pursuant to s. 394.462 for examination. The
191 officer shall execute a written report detailing the
192 circumstances under which the person was taken into custody,
193 which must be made a part of the patient's clinical record. The
194 report must include all emergency contact information for the
195 person that is readily accessible to the law enforcement
196 officer, including information available through electronic
197 databases maintained by the Department of Law Enforcement or by
198 the Department of Highway Safety and Motor Vehicles. Such
199 emergency contact information may be used by a receiving
200 facility only for the purpose of informing listed emergency

201 contacts of a patient's whereabouts and shall otherwise remain
202 confidential and exempt pursuant to s. 119.0712(2)(d). Any
203 facility accepting the patient based on this report must send a
204 copy of the report to the department within 5 working days.

205 3. A physician, a physician assistant, a clinical
206 psychologist, a psychiatric nurse, an advanced practice
207 registered nurse registered under s. 464.0123, a mental health
208 counselor, a marriage and family therapist, or a clinical social
209 worker may execute a certificate stating that he or she has
210 examined a person within the preceding 48 hours and finds that
211 the person appears to meet the criteria for involuntary
212 examination and stating the observations upon which that
213 conclusion is based. If other less restrictive means, such as
214 voluntary appearance for outpatient evaluation, are not
215 available, a law enforcement officer shall take into custody the
216 person named in the certificate and deliver him or her to the
217 appropriate, or nearest, facility within the designated
218 receiving system pursuant to s. 394.462 for involuntary
219 examination. The law enforcement officer shall execute a written
220 report detailing the circumstances under which the person was
221 taken into custody. The report must include all emergency
222 contact information for the person that is readily accessible to
223 the law enforcement officer, including information available
224 through electronic databases maintained by the Department of Law
225 Enforcement or by the Department of Highway Safety and Motor

226 Vehicles. Such emergency contact information may be used by a
227 receiving facility only for the purpose of informing listed
228 emergency contacts of a patient's whereabouts and shall
229 otherwise remain confidential and exempt pursuant to s.
230 119.0712(2)(d). The report and certificate shall be made a part
231 of the patient's clinical record. Any facility accepting the
232 patient based on this certificate must send a copy of the
233 certificate to the department within 5 working days. The
234 document may be submitted electronically through existing data
235 systems, if applicable.

236
237 When sending the order, report, or certificate to the
238 department, a facility shall, at a minimum, provide information
239 about which action was taken regarding the patient under
240 paragraph (g), which information shall also be made a part of
241 the patient's clinical record.

242 (e) The department shall receive and maintain the copies
243 of ex parte orders, involuntary outpatient services orders
244 issued pursuant to s. 394.4655, involuntary inpatient placement
245 orders issued pursuant to s. 394.467, professional certificates,
246 ~~and~~ law enforcement officers' reports, and reports relating to
247 the transportation of patients. These documents shall be
248 considered part of the clinical record, governed by the
249 provisions of s. 394.4615. These documents shall be used to
250 prepare annual reports analyzing the data obtained from these

251 documents, without information identifying patients, and shall
252 provide copies of reports to the department, the President of
253 the Senate, the Speaker of the House of Representatives, and the
254 minority leaders of the Senate and the House of Representatives.

255 (f) A patient shall be examined by a physician or a
256 clinical psychologist, or by a psychiatric nurse performing
257 within the framework of an established protocol with a
258 psychiatrist at a facility without unnecessary delay to
259 determine if the criteria for involuntary services are met.
260 Emergency treatment may be provided upon the order of a
261 physician if the physician determines that such treatment is
262 necessary for the safety of the patient or others. The patient
263 may not be released by the receiving facility or its contractor
264 without the documented approval of a psychiatrist or a clinical
265 psychologist or, if the receiving facility is owned or operated
266 by a hospital, ~~or~~ health system, or nationally accredited
267 community mental health center, the release may also be approved
268 by a psychiatric nurse performing within the framework of an
269 established protocol with a psychiatrist, or an attending
270 emergency department physician with experience in the diagnosis
271 and treatment of mental illness after completion of an
272 involuntary examination pursuant to this subsection. A
273 psychiatric nurse may not approve the release of a patient if
274 the involuntary examination was initiated by a psychiatrist
275 unless the release is approved by the initiating psychiatrist.

276 (g) The examination period must be for up to 72 hours. For
277 a minor, the examination shall be initiated within 12 hours
278 after the patient's arrival at the facility. Within the
279 examination period ~~or, if the examination period ends on a~~
280 ~~weekend or holiday, no later than the next working day~~
281 ~~thereafter~~, one of the following actions must be taken, based on
282 the individual needs of the patient:

- 283 1. The patient shall be released, unless he or she is
284 charged with a crime, in which case the patient shall be
285 returned to the custody of a law enforcement officer;
- 286 2. The patient shall be released, subject to subparagraph
287 1., for voluntary outpatient treatment;
- 288 3. The patient, unless he or she is charged with a crime,
289 shall be asked to give express and informed consent to placement
290 as a voluntary patient and, if such consent is given, the
291 patient shall be admitted as a voluntary patient; or
- 292 4. A petition for involuntary services shall be filed in
293 the circuit court if inpatient treatment is deemed necessary or
294 with the criminal county court, as defined in s. 394.4655(1), as
295 applicable. When inpatient treatment is deemed necessary, the
296 least restrictive treatment consistent with the optimum
297 improvement of the patient's condition shall be made available.
298 When a petition is to be filed for involuntary outpatient
299 placement, it shall be filed by one of the petitioners specified
300 in s. 394.4655(4) (a). A petition for involuntary inpatient

301 placement shall be filed by the facility administrator. If a
 302 patient's 72-hour examination period ends on a weekend or
 303 holiday, and the receiving facility:

304 a. Intends to file a petition for involuntary services,
 305 such patient may be held at the receiving facility through the
 306 next working day thereafter and such petition for involuntary
 307 services must be filed no later than such date. If the receiving
 308 facility fails to file a petition for involuntary services at
 309 the close of the next working day, the patient shall be released
 310 from the receiving facility.

311 b. Does not intend to file a petition for involuntary
 312 services, the receiving facility may postpone release of such
 313 patient until the next working day thereafter only if a
 314 qualified professional documents that adequate discharge
 315 planning and procedures in accordance with s. 394.468 are not
 316 possible until the next working day.

317 (5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND
 318 TREATMENT; PENALTIES.-

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

320 1. Furnish false information for the purpose of obtaining
 321 emergency or other involuntary admission of another person; or

322 2. Cause or otherwise secure, or conspire with or assist
 323 another person to cause or secure, any emergency or other
 324 involuntary procedure of another person under false pretenses.

325 (b) A person who violates this subsection commits a

326 misdemeanor of the first degree, punishable as provided in s.
 327 775.082 and by a fine not exceeding \$5,000.

328 Section 5. Section 394.468, Florida Statutes, is amended
 329 to read:

330 394.468 Admission and discharge procedures.—

331 (1) Admission and discharge procedures and treatment
 332 policies of the department are governed solely by this part.
 333 Such procedures and policies shall not be subject to control by
 334 court procedure rules. The matters within the purview of this
 335 part are deemed to be substantive, not procedural.

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

- 339 (a) Followup behavioral health appointments;
- 340 (b) Information on how to obtain prescribed medications;

341 and

342 (c) Information pertaining to:

- 343 1. Available living arrangements;
- 344 2. Transportation; and
- 345 3. Recovery support opportunities.

346 Section 6. Paragraph (c) of subsection (3) and subsection
 347 (5) of section 394.9086, Florida Statutes, are amended, and
 348 paragraphs (d) and (e) are added to subsection (3) of that
 349 section, to read:

350 394.9086 Commission on Mental Health and Substance Abuse.—

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

352 (c) The commission shall convene no later than September
 353 1, 2021. The commission shall meet quarterly or upon the call of
 354 the chair. The commission may ~~shall~~ hold its meetings in person
 355 at locations throughout the state or via teleconference or other
 356 electronic means.

357 (d) Members of the commission are entitled to receive
 358 reimbursement for per diem and travel expenses pursuant to s.
 359 112.061.

360 (e) Notwithstanding any other law, the commission may
 361 request and shall be provided with access to any information or
 362 records, including exempt or confidential and exempt information
 363 or records, which are necessary for the commission to carry out
 364 its duties. Information or records obtained by the commission
 365 which are otherwise exempt or confidential and exempt shall
 366 retain such exempt or confidential and exempt status, and the
 367 commission may not disclose any such information or records.

368 (5) REPORTS.—By January 1, 2023 ~~September 1, 2022~~, the
 369 commission shall submit an interim report to the President of
 370 the Senate, the Speaker of the House of Representatives, and the
 371 Governor containing its findings and recommendations on how to
 372 best provide and facilitate mental health and substance abuse
 373 services in the state. The commission shall submit its final
 374 report to the President of the Senate, the Speaker of the House
 375 of Representatives, and the Governor by September 1, 2023.

376 Section 7. Subsection (5) is added to section 397.601,
 377 Florida Statutes, to read:

378 397.601 Voluntary admissions.—

379 (5) A service provider must document that, within 24 hours
 380 after admission, an individual admitted on a voluntary basis has
 381 been provided with the option to authorize the release of
 382 information from his or her clinical record to the individual's
 383 health care surrogate or proxy, attorney, representative, or
 384 other known emergency contact.

385 Section 8. Section 397.6772, Florida Statutes, is amended
 386 to read:

387 397.6772 Protective custody without consent.—

388 (1) If a person in circumstances which justify protective
 389 custody as described in s. 397.677 fails or refuses to consent
 390 to assistance and a law enforcement officer has determined that
 391 a hospital or a licensed detoxification or addictions receiving
 392 facility is the most appropriate place for the person, the
 393 officer may, after giving due consideration to the expressed
 394 wishes of the person:

395 (a) Take the person to a hospital or to a licensed
 396 detoxification or addictions receiving facility against the
 397 person's will but without using unreasonable force. The officer
 398 shall use the standard form developed by the department pursuant
 399 to s. 397.321 to execute a written report detailing the
 400 circumstances under which the person was taken into custody. The

401 report must include all emergency contact information for the
402 person that is readily accessible to the law enforcement
403 officer, including information available through electronic
404 databases maintained by the Department of Law Enforcement or by
405 the Department of Highway Safety and Motor Vehicles. Such
406 emergency contact information may be used by a hospital or
407 licensed detoxification or addictions receiving facility only
408 for the purpose of informing listed emergency contacts of a
409 patient's whereabouts and shall otherwise remain confidential
410 and exempt pursuant to s. 119.0712(2)(d). The written report
411 shall be included in the patient's clinical record; or

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

415
416 Such detention is not to be considered an arrest for any
417 purpose, and no entry or other record may be made to indicate
418 that the person has been detained or charged with any crime. The
419 officer in charge of the detention facility must notify the
420 nearest appropriate licensed service provider within the first 8
421 hours after detention that the person has been detained. It is
422 the duty of the detention facility to arrange, as necessary, for
423 transportation of the person to an appropriate licensed service
424 provider with an available bed. Persons taken into protective
425 custody must be assessed by the attending physician within the

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426 72-hour period and without unnecessary delay, to determine the
427 need for further services.

428 (2) The law enforcement officer must notify the nearest
429 relative of a minor in protective custody and ~~must be notified~~
430 ~~by the law enforcement officer,~~ as must notify the nearest
431 relative or other known emergency contact of an adult, unless
432 the adult requests that there be no notification. The law
433 enforcement officer must document such notification, and any
434 attempts at such notification, in the written report detailing
435 the circumstances under which the person was taken into custody
436 as required under paragraph (1)(a).

437 Section 9. This act shall take effect July 1, 2022.