

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 795 Peer Specialists
SPONSOR(S): Children, Families & Seniors Subcommittee, Fetterhoff
TIED BILLS: **IDEN./SIM. BILLS:** SB 282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	16 Y, 0 N, As CS	Morris	Brazzell
2) Health & Human Services Committee	20 Y, 0 N	Morris	Calamas

SUMMARY ANALYSIS

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services

Peer specialists are individuals who have life experience with a mental health and/or substance use condition and provide recovery support services to individuals with a current substance use disorder or mental illness. Currently, peer specialists who provide DCF-funded recovery support services must be certified and undergo a level 2 background screening pursuant to ch. 435, F.S. A peer specialist who commits an offense listed in ch. 435, F.S., is disqualified from certification, unless exempted by DCF. While an exemption request is pending, peer specialists may work with adults, but not children, suffering from substance use disorder (SUD) or co-occurring disorders for 90 days.

Peer specialists are certified by a credentialing entity, the Florida Certification Board (FCB). The FCB provides training and administers a competency exam for peer specialists seeking certification.

The bill amends statutes governing peer specialists. Specifically, the bill:

- Requires DCF to develop a training program for peer specialists, giving preference to trainers who are certified peer specialists, and issue a competency examination that coincides with such training;
- Requires DCF to certify peer specialists either directly or through a credentialing entity;
- Requires peer specialists providing recovery support services to be certified;
- Revises background screening requirements by adding offenses for which individuals seeking certification as a peer specialist may seek an exemption from eligibility disqualification, and grants an exemption from the updated background screening requirements to individuals certified as peer specialists as of July 1, 2022; and
- Allows peer specialists to work with adults with mental health disorders, in addition to adults with SUD or co-occurring disorders, while an exemption request is pending, and extends the time limit for such work to 180 days.

The bill has an insignificant, indeterminate, negative fiscal impact on DCF. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Substance Abuse

Approximately 1.1 million Floridians have a substance use disorder (SUD).¹ Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.² Substance use disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.³ Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.⁴ Brain imaging studies of persons with substance use disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁵

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.⁶ The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.⁷

Substance Abuse Treatment in Florida

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery.

DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence:⁸

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.⁹
- **Treatment Services:** Treatment services¹⁰ include a wide array of assessment, counseling, case management, and support services that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.¹¹
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during

¹ Substance Abuse and Mental Health Administration, *Behavioral Health Barometer, Florida, Volume 6*, (2020), https://www.samhsa.gov/data/sites/default/files/reports/rpt32826/Florida-BH-Barometer_Volume6.pdf (last visited Jan. 5, 2022).

² World Health Organization, *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Jan. 5, 2022).

³ Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited Jan. 5, 2022).

⁴ National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited Jan. 5, 2022).

⁵ Id.

⁶ *Supra*, note 4.

⁷ Id.

⁸ Department of Children and Families, *Treatment for Substance Abuse*, <https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml> (last visited Jan. 5, 2022).

⁹ Id.

¹⁰ Id. Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child protective system, employment, increased earnings, and better health.

¹¹ *Supra*, note 8.

and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.¹²

DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and rule 65D-30, F.A.C. All private and publicly-funded entities providing substance abuse services must be licensed for each service component they provide.¹³ However, current law exempts certain entities from licensure:¹⁴

- A hospital or hospital-based component;
- A nursing home facility;
- A substance abuse education program established under the public school system;
- A facility or institution operated by the Federal Government;
- An allopathic or osteopathic physician or physician assistant;
- A psychologist;
- A social worker;
- A marriage and family therapist;
- A mental health counselor;
- A church or nonprofit religious organization or denomination that provides services which are solely religious, spiritual, or ecclesiastical in nature;
- A facility licensed by the Agency for Persons with Disabilities;
- DUI education and screening services under the Florida Uniform Traffic Control Law; and
- A crisis stabilization unit.

Licensed service components include a continuum of substance abuse prevention,¹⁵ intervention,¹⁶ and clinical treatment services.¹⁷ Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.¹⁸ “Clinical treatment services” include, but are not limited to, the following licensable service components:¹⁹

- Addictions receiving facility;
- Day or night treatment;
- Day or night treatment with community housing;
- Detoxification;
- Intensive inpatient treatment;
- Intensive outpatient treatment;
- Medication-assisted treatment for opiate addiction;
- Outpatient treatment; and
- Residential treatment.

Peer Specialists

¹² Id.

¹³ S. 397.403, F.S.

¹⁴ S. 397.4012, F.S.

¹⁵ S. 397.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles. See also, Department of Children and Families, *Substance Abuse: Prevention*, <https://www.myflfamilies.com/service-programs/samh/prevention/> (last visited Jan. 5, 2022). Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments.

¹⁶ S. 397.311(26)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.

¹⁷ S. 397.311(25), F.S.

¹⁸ Id.

¹⁹ S. 397.311(25)(a), F.S.

Research has shown that social support provided by peers is beneficial to those in recovery from a substance use disorder or mental illness.²⁰ DCF's Florida Peer Services Handbook defines a "peer" as an individual who has life experience with a mental health and/or substance use condition.²¹ There are four primary types of social support provided by peers.²²

- **Emotional:** where a peer demonstrates empathy, caring or concern to bolster a person's self-esteem. (i.e., peer mentoring or peer-led support groups).
- **Informational:** where a peer shares knowledge and information to provide life or vocational skills training. (i.e., parenting classes, job readiness training, or wellness seminars).
- **Instrumental:** where a peer provides concrete assistance to help others accomplish tasks. (i.e., child care, transportation, and help accessing health and human services).
- **Affiliational:** where a peer facilitates contacts with other people to promote learning of social skills, create a sense of community, and acquire a sense of belonging. (i.e., recovery centers, sports league participation, and alcohol or drug free socialization opportunities).

The most recognized form of peer support is the 12-step programs of Alcoholics Anonymous and Narcotics Anonymous. More recently, as the nation faces a shortage of mental health professionals, peers or peer specialists have been used to fill the gap and assist persons with substance use disorders and mental illnesses.²³

In Florida, DCF and Medicaid both allow reimbursement for peer support services but only if provided by certified peer specialists.²⁴ DCF defines a peer specialist as an individual who:²⁵

- Self-identifies as a person who has direct personal experience living in recovery from mental health and/or substance use conditions;
- Has a desire to use his or her experience to help others with their recovery;
- Is willing to publicly identify as a person living in recovery for the purpose of educating, role modeling, and providing hope to others about the reality of recovery; and
- Has had the proper training and experience to work in a provider role.

DCF guidelines recommend that an individual be in recovery for at least two years to be considered for peer training.²⁶ In Florida, family members or caregivers of an individual with a mental illness or SUD can also be employed as peers.²⁷

Certification

DCF and Medicaid both allow reimbursement for recovery support services provided by peer specialists, but only if those peer specialists are certified.²⁸

An individual seeking to become a certified peer specialist must have either been in recovery from a SUD or mental illness for at least two years, or must have at least two years of experience as a family member or caregiver of an individual suffering from a substance use disorder or mental illness.²⁹ DCF must approve one or more third-party credentialing entities for the purposes of certifying peer

²⁰ Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, *What Are Peer Recovery Support Services?*, <https://store.samhsa.gov/system/files/sma09-4454.pdf> (last visited Jan. 5, 2022).

²¹ Department of Children and Families, *Florida Peer Services Handbook*, 2016, <http://www.dcf.state.fl.us/programs/samh/publications/peer-services/DCF-Peer-Guidance.pdf> (last visited Jan. 5, 2022).

²² *Supra* note 20.

²³ Centers for Medicare & Medicaid Services, Guidance Letter to State Medicaid Directors, Aug. 15, 2007, available at: <https://downloads.cms.gov/cms.gov/archived-downloads/SMDL/downloads/SMD081507A.pdf> (last visited Jan. 5, 2022).

²⁴ *Supra*, note 21. Florida's Medicaid program currently covers peer recovery services; DCF allows the state's behavioral health managing entities to reimburse for peer recovery services.

²⁵ *Supra* note 21.

²⁶ *Supra* note 24.

²⁷ *Supra* note 21.

²⁸ *Supra*, note 21. Florida's Medicaid program currently covers peer recovery services; DCF allows the state's behavioral health managing entities to reimburse for peer recovery services.

²⁹ S. 397.417(1), F.S.

specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the minimum requirements and standards that applicants must achieve to maintain certification.³⁰ To obtain approval, the third-party credentialing entity must demonstrate compliance with nationally recognized standards for developing and administering professional certification programs to certify peer specialists.³¹ All individuals providing DCF-funded recovery support services as a peer specialist must be certified, however, an individual who is not currently certified may work as a peer specialist for a maximum of one year if that individual is working toward certification and is supervised by a qualified professional or by a certified peer specialist with at least three years of full-time experience as a peer specialist at a licensed behavioral health organization.³²

The Florida Certification Board (FCB) is currently the only credentialing entity approved by the DCF for certifying peer specialists in the state.³³ The FCB credentials Certified Recovery Peer Specialists (CRPS) which assist in providing client directed care by helping individuals develop skills and relationships that will allow them to achieve and maintain recovery from SUDs and mental illness.³⁴ CRPS applicants must attest to having been in recovery for a minimum of two years.³⁵ The CRPS must also have demonstrated competency through training and experience in the performance domains of Recovery Support, Advocacy, Mentoring and Professional Responsibilities.³⁶ As of January 2022, there are 728 active CRPS in the state.³⁷

Individuals seeking certification must adhere to the CRPS credentialing standards and requirements, complete a background screening, and have completed all court-ordered sanctions related to any prior crimes committed for at least three years.³⁸ Prospective CRPS must also successfully complete training and pass a competency exam demonstrating proficiency in certain educational areas.³⁹

Background Screening

Background Screening Process

Current law establishes standard procedures for criminal history background screening of prospective employees; ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,⁴⁰ and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁴¹

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.⁴² Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.⁴³

³⁰ S. 397.417(2), F.S.

³¹ Id.

³² S. 397.417(3), F.S.

³³ Supra, note 21.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Email from Terri Brown, Legislative Affairs Coordinator, Department of Children and Families (Jan. 13, 2022).

³⁸ Id.

³⁹ Id.

⁴⁰ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited Jan. 5, 2022).

⁴¹ Section 435.04, F.S.

⁴² Section 435.05(1)(a), F.S.

⁴³ Sections 435.03(1) and 435.04(1)(a), F.S.

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to FDLE within five working days after receiving it.⁴⁴ Additionally, for both levels of screening, FDLE must perform a criminal history record check of its records.⁴⁵ For a level 1 screening, this is the only information searched, and once complete, FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.⁴⁶ For level 2 screening, FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.⁴⁷ As with a level 1 screening, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information. If the employer or agency finds that an individual has a history containing one of these offenses, it must disqualify that individual from employment.

The person whose background is being checked must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.⁴⁸

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the following 52 offenses prohibited under Florida law, or similar law of another jurisdiction:⁴⁹

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing of an unborn child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.

⁴⁴ Section 435.05(1)(b)-(c), F.S.

⁴⁵ Id.

⁴⁶ S. 435.05(1)(b), F.S.

⁴⁷ S. 435.05(1)(c), F.S.

⁴⁸ S. 435.05(1)(d), F.S.

⁴⁹ S. 435.04(2), F.S.

- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Chapter 796, F.S., relating to prostitution.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 806.01, F.S., relating to arson.
- Section 810.02, F.S., relating to burglary.
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony.
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony.
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.
- Section 827.071, F.S., relating to sexual performance by a child.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer of means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, F.S., relating to obscene literature.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to contraband introduced into detention facilities.

Exemption from Disqualification

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the Secretary of the appropriate agency to exempt applicants from that disqualification under certain circumstances:⁵⁰

- Three years have elapsed since the individual has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a disqualifying felony; or
- The applicant has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a misdemeanor or an offense that was a felony at the time of commission but is now a misdemeanor.

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,⁵¹ career offender,⁵² or sexual offender (unless not required to register)⁵³ cannot ever be exempted from disqualification.⁵⁴

Additionally, individuals employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of certain crimes may be exempted from disqualification from employment, without applying the 3-year waiting period. These crimes include certain offenses related to:⁵⁵

- Prostitution;
- Unarmed burglary of a structure;
- Third degree felony grand theft;
- Sale of imitation controlled substance;
- Forgery;
- Uttering or publishing a forged instrument;
- Sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver controlled substances (excluding drug trafficking); and
- Use, possession, manufacture, delivery, transportation, advertisement, or sale of drug paraphernalia.

To seek exemption from disqualification, an employee must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification.⁵⁶ However, the individual must first have paid all court-ordered payments (e.g., fees, fines, costs of prosecution or restitution) and three years must have passed since the individual's release from confinement and completion of supervision (e.g., probation) and satisfaction of all other nonmonetary conditions (e.g., community service) before the agency head can consider the request.⁵⁷

The disqualified employee must submit an exemption packet to provide information for the agency head to use in determining whether he or she meets the statutory standards for an exemption from disqualification.⁵⁸ The packet requests the employee to provide:⁵⁹

⁵⁰ S. 435.07(1), F.S.

⁵¹ S. 775.261, F.S.

⁵² S. 775.261, F.S.

⁵³ S. 943.0435, F.S.

⁵⁴ S. 435.07(4)(b), F.S.

⁵⁵ S. 435.07(2), F.S.

⁵⁶ S. 397.4073(1)(f), F.S.

⁵⁷ Department of Children and Families, *Request for an Exemption*, <https://www.myflfamilies.com/service-programs/background-screening/> (last visited Jan. 5, 2022).

⁵⁸ *Id.*

⁵⁹ Department of Children and Families, *Exemption Request Checklist*,

<https://www.myflfamilies.com/programs/backgroundscreening/docs/Exemption%20Request%20Checklist.pdf> (last visited Jan. 5, 2022).

- A certified copy from the court file of the petition (filing of information), and final disposition for each disqualifying criminal offense;
- A copy of the arrest report for each disqualifying criminal offense. If the report is not available, a statement from the court or law enforcement agency that the record does not exist or has been destroyed is acceptable;
- A copy of arrest reports and dispositions for any additional identified criminal offenses;
- Documentation from the probation department or court documenting release from supervision if probation or parole was given;
- Two or more original, signed letters of recommendation or letters of reference that attest to good moral character;
- Proof of rehabilitation;⁶⁰
- Employment history record; and
- An explanation of personal history, e.g., explain what happened with each arrest, current home life, education/training, family members, goals, and community involvement.

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.⁶¹ Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.⁶² This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion. This evidence must create a firm belief and conviction of the truth of the facts presented and, considered as a whole, must convince DCF representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable adults, or to developmentally disabled individuals. Evidence that may support an exemption includes, but is not limited to:⁶³

- Personal references;
- Letters from employers or other professionals;
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program;
- Evidence of further education or training;
- Evidence of community involvement;
- Evidence of special awards or recognition;
- Evidence of military service; and
- Parenting or other caregiver experiences.

After the agency head receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption. These materials, in addition to the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.⁶⁴

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor, and after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted. The regional legal counsel's office reviews the recommendation to grant or deny an exemption to determine legal sufficiency; the criminal justice coordinator in the region in which the background screening coordinator is located also reviews the

⁶⁰ Proof of rehabilitation includes successful completion of court-ordered treatment or counseling, educational or training certificates, proof of participation in community activities, special recognition, or awards received.

⁶¹ S. 435.07(3)(a), F.S.

⁶² Department of Children and Families, CF Operating Procedure 60-18, Personnel: Exemption from Disqualification, Appendix B, (Aug. 1, 2010), <https://www.myflfamilies.com/admin/publications/cfops/CFOP%20060-xx%20Human%20Resources/CFOP%2060-18,%20Exemption%20from%20Disqualification.pdf> (last visited Jan. 5, 2022).

⁶³ Id. at 3-4.

⁶⁴ Id.

exemption request file and recommendation and makes an initial determination whether to grant or deny the exemption.⁶⁵

If the regional criminal justice coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the regional director, who has delegated authority from the agency head to grant or deny the exemption. After an exemption request decision is final, the background screener provides a written response to the applicant as to whether the request is granted or denied.⁶⁶

If the agency head grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.⁶⁷ However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address and a separate letter of denial is sent by regular mail to the facility or employer.⁶⁸ If the application is denied, the denial letter must set forth pertinent facts that the background screening coordinator, the background screening coordinator's supervisor, the criminal justice coordinator, and regional director, where appropriate, used in deciding to deny the exemption request.⁶⁹ It must also inform the denied applicant of the availability of an administrative review⁷⁰ pursuant to ch. 120, F.S.⁷¹

Background Screening and Substance Abuse Treatment Employees

Substance Use Disorder and Criminal History

Some individuals receiving substance abuse treatment have a criminal or violent history. About 54% of state prisoners and 61% of sentenced jail inmates incarcerated for violent offenses meet the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, (DSM-IV) criteria for drug dependence or abuse.⁷² Additionally, individuals who use illicit drugs are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.⁷³ As a result, individuals who have recovered from a substance use disorder or mental illness often have a criminal history.

Some of these individuals with criminal pasts, once in recovery, may contribute to the substance abuse treatment industry as a volunteer, peer, or other employee of a substance abuse treatment program that provides support. Social support services have been shown to facilitate recovery from a substance use disorder or mental illness.⁷⁴ Additionally, these individuals bring many "lived experiences," including experience navigating the criminal justice system, which give them the ability to assist others in recovery.⁷⁵ However, the crimes committed during the period while these individuals were abusing substances may disqualify them from employment in the substance abuse treatment industry due to Florida's background screening process.

⁶⁵ Id.

⁶⁶ *Supra* note 59 at 5.

⁶⁷ Id. at 6.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ All notices of denial of an exemption shall advise the applicant of the basis for the denial, that an administrative hearing pursuant to s. 120.57, F.S., may be requested, and that the request must be made within 21 days of receipt of the denial letter or the applicant's right to an appeal will be waived.

⁷¹ *Supra*, note 59 at 6.

⁷² Jennifer Bronson, et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, June 2017, <https://www.bjs.gov/content/pub/pdf/dudaspi0709.pdf> (last visited Jan. 5, 2022).

⁷³ National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*, https://d14rmgtrwz5a.cloudfront.net/sites/default/files/xcriminaljustice_0.pdf (last visited Jan. 5, 2022).

⁷⁴ Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, *What Are Peer Recovery Support Services?*, <https://store.samhsa.gov/system/files/sma09-4454.pdf> (last visited Jan. 5, 2022).

⁷⁵ Department of Children and Families, *Florida Peer Services Handbook*, 2016, <https://www.myflfamilies.com/service-programs/samh/publications/docs/peer-services/DCF-Peer-Guidance.pdf> (last visited Jan. 5, 2022).

Screening Requirements

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires all peer specialists who have direct contact with individuals receiving services; owners, directors, chief financial officers, and clinical supervisors of service providers; and all service provider personnel who have direct contact with children or with adults who are developmentally disabled receiving services to undergo a level 2 background screening. However, certain personnel are excluded from background screening requirements:⁷⁶

- Persons who volunteer at a program for less than 40 hours per month and who are under direct and constant supervision by persons who meet all screening requirements;
- Service providers who are exempt from licensing; and
- Persons employed by the Department of Corrections in an inmate substance abuse program unless they have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled.

Exemption from Disqualification

Other statutory provisions facilitate individuals in recovery who have disqualifying offenses being able to work in substance abuse treatment. For example, DCF may grant exemptions from disqualification that would limit service provider personnel to working with adults in substance abuse treatment facilities.⁷⁷ As discussed previously, DCF may also grant exemptions for service providers which treat adolescents 13 years of age and older, whose background checks indicate certain drug crimes⁷⁸ without the usual three-year waiting period for felonies.⁷⁹

Similarly, if five years or more (or three years or more in the case of a certified peer specialist or applicant) have elapsed since the person has completed or been lawfully released from confinement, supervision, or non-monetary condition imposed by a court for the most recent disqualifying offense, an employee may work with adults with substance use disorders until DCF makes a final determination regarding the request for an exemption from disqualification.⁸⁰ By law, this determination may take no longer than 90 days.⁸¹ These individuals must work under the supervision of qualified personnel until DCF makes a final determination on the exemption request.

Between 2016 and 2021, DCF has granted 12 exemptions and denied three exemption requests, one of which was granted after an administrative appeal.⁸² Four additional requests for exemption have been received by DCF since July 2021. The vast majority of applicants were eligible and did not require an exemption.

Behavioral Health Managing Entities

In 2001, the Legislature authorized DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.⁸³ The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.⁸⁴ Full implementation of the statewide managing entity system occurred in April 2013; all geographic regions are now served by a managing entity.⁸⁵

⁷⁶ S. 397.4073(1)(c)-(e), F.S.

⁷⁷ S. 397.4073 (4)(c), F.S.

⁷⁸ Specifically, ss. 817.563, 893.13, or 893.147, F.S.

⁷⁹ S. 397.4073 (4)(b), F.S., provides exemptions for crimes under ss. 817.563, 893.13, and 893.147, F.S. These exemptions only apply to providers who treat adolescents age 13 and older, as well as personnel who work exclusively with adults.

⁸⁰ S. 397.4073(1)(g), F.S.

⁸¹ *Id.*

⁸² *Supra*, note 37.

⁸³ Ch. 2001-191, Laws of Fla.

⁸⁴ Ch. 2008-243, Laws of Fla.

⁸⁵ *The Department of Children and Families Performance and Accountability System for Behavioral Health Managing Entities*, Office of Program Policy Analysis and Government Accountability, July 18, 2014.

In FY 2019-2020, the network service providers under contract with the MEs served 274,560 individuals.⁸⁶

Coordinated System of Care

Managing entities are required to promote the development and implementation of a coordinated system of care.⁸⁷ A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a managing entity or by another method of community partnership or mutual agreement.⁸⁸ A community or region provides a coordinated system of care for those who have a mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, DCF may award system improvement grants to MEs.⁸⁹ MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in DCF's assessment of behavioral health services in this state.⁹⁰ DCF must use performance-based contracts to award grants.⁹¹

There are several essential elements which make up a coordinated system of care, including:⁹²

- Community interventions;
- Case management;
- Care coordination;
- Outpatient services;
- Residential services;
- Hospital inpatient care;
- Aftercare and post-discharge services;
- Medication assisted treatment and medication management; and
- Recovery support.

A coordinated system of care must include, but is not limited to, the following array of services:⁹³

- Prevention services;
- Home-based services;
- School-based services;
- Family therapy;
- Family support;
- Respite services;
- Outpatient treatment;
- Crisis stabilization;
- Therapeutic foster care;
- Residential treatment;
- Inpatient hospitalization;
- Case management;
- Services for victims of sex offenses;
- Transitional services; and
- Trauma-informed services for children who have suffered sexual exploitation.

⁸⁶ Department of Children and Families, *Substance Abuse and Mental Health Triennial Plan Update for Fiscal Year 2019-2020*, (Dec. 31, 2020) <https://www.myflfamilies.com/service-programs/samh/publications/docs/2019-2020%20Triennial%20Plan%20Update.pdf> (last visited Jan. 5, 2022).

⁸⁷ S. 394.9082(5)(d), F.S.

⁸⁸ S. 394.4573(1)(c), F.S.

⁸⁹ S. 394.4573(3), F.S. The Legislature has not funded system improvement grants.

⁹⁰ Id.

⁹¹ Id.

⁹² S. 394.4573(2), F.S.

⁹³ S. 394.495(4), F.S.

Current law requires DCF to define the priority populations which would benefit from receiving care coordination, including considerations when defining such population.⁹⁴ Considerations include the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

Effect of the Bill

Service Provision by Peer Specialists

The bill expands the scope of recovery support as an element of the state's behavioral health coordinated system of care to include the contributions of peer specialists.

Peer Specialist Certification

The bill requires peer specialists providing any recovery support services to become certified, removing the current law requiring certification only for those providing DCF-funded recovery support services.

The bill requires DCF to develop a training program for peer specialists, giving preference to trainers who are certified peer specialists, which must coincide with an exam and be based on current practice standards. Under the bill, DCF is authorized to certify peer specialists directly or approve a credentialing entity to do so.

The bill maintains the requirement that DCF must approve one or more third-party credentialing entities for the purposes of certifying peer specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the minimum requirements and standards that applicants must achieve to maintain certification, but also authorizes DCF to certify peer specialists directly in lieu of a third-party credentialing entity if DCF so chooses.

The bill grandfathers in individuals certified as peer specialists as of July 1, 2022. Such individuals are deemed to have met the requirements for certification under the bill.

Peer Specialist Background Screening

The bill creates a separate process for background screening peer specialists outside the requirements of ch. 435, F.S. but maintains the same process for background screening as required in ch. 435, F.S. with revisions to disqualifying offenses. The bill and ch. 435, F.S., specifically require applicants to submit a full set of fingerprints to DCF, or to a vendor, entity, or agency⁹⁵ that has entered into an agreement with the Florida Department of Law Enforcement (FDLE). Fingerprints must then be forwarded to FDLE for state processing and retention, and to the FBI for national processing and retention. This will enable FDLE to conduct ongoing, fingerprint-based, state and national background checks on certified peer specialists.

The bill requires FDLE to report any arrest record to DCF. The bill requires DCF to screen results in order to ensure an applicant meets the requirements of certification, and maintains the requirement that the applicant peer specialist pays all fees charged in connection with state and federal fingerprint processing and retention.⁹⁶

Current law authorizes DCF and the Agency for Health Care Administration (AHCA) to contract with vendors for electronic fingerprinting. The bill requires those contracts to ensure the integrity and

⁹⁴ S. 394.9082(3)(c), F.S.

⁹⁵ S. 943.053(13), F.S., provides criteria which must be followed in order for the FDLE to accept fingerprints submissions from private vendors, entities, or agencies.

⁹⁶ This cost is already borne by the applicant under current law requiring level 2 background screening for certified peer specialists. See ss. 397.4073(1)(a)3. and 408.809(5), F.S.

security of all personal identifying information obtained. Vendors who submit fingerprints on behalf of employees must:

- Meet the requirements of s. 943.053, F.S.;⁹⁷
- Be capable of communicating electronically with the state agency accepting screening results from the FDLE; and
- Be capable of providing the applicant's:
 - Full first name, middle initial, and last name;
 - Social security number or individual taxpayer identification number;
 - Date of birth;
 - Mailing address;
 - Sex; and
 - Race.

Disqualifying Offenses

The bill includes felony arrests within the last three years as a disqualification for certification as a peer specialist. This applies to felony arrests for which the peer specialist is awaiting final disposition of, was found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged. This broadens the screening requirements for peer specialists, making standards higher for them compared to other professionals for which screening is required. This may increase the number of peer specialist applicants who must request exemption from disqualification. However, it ensures the peer specialist does not have ongoing possible criminal activity and can serve as an appropriate peer for people in recovery.

The new screening requirements of the bill also eliminate the following offenses which currently disqualify individuals for employment as peer specialists:

- Misdemeanor assault, or battery (Ch. 784, F.S.);
- Prostitution (Ch. 796, F.S.), with the exception of those offenses listed in s. 796.07, F.S., which have not been expunged;
- Lower level burglary offenses (s. 810.02, F.S.);
- Lower level theft and robbery offenses (Ch. 812, F.S.);
- Lower level drug abuse offenses (s. 817.563 and Ch. 893, F.S.);
- Credit card fraud (ss. 817.481, 817.60, and 817.61, F.S.); and
- Forgery (ss. 831.01, 831.02, 831.07 and 831.09, F.S.).

This means that fewer disqualifying offenses will apply to peer specialist certification applicants, reducing exemption requests and possibly increasing the number of certified peer specialists.

⁹⁷ S. 943.053, F.S., provides, among other things, standards for vendors meant to ensure that all persons having direct or indirect responsibility for verifying identification, taking fingerprints, and electronically submitting fingerprints are qualified to do so and will ensure the integrity and security of all personal information gathered from the persons whose fingerprints are submitted.

Exemptions

Currently, peer specialists are permitted to work with adults suffering from substance use disorder or co-occurring disorders for 90 days while an exemption request is pending. The bill allows peer specialists to also work with adults with mental health disorders as well, while an exemption request is pending. It also extends the time limit for such work from 90 days to 180 days for both groups of adults. However, because current law requires DCF to grant or deny exemption requests within 60 days, the time extension appears to have little impact.

The bill restructures current law relating to peer specialist certification and background screening requirements and retains current law relating to:

- Authorization for DCF or AHCA to contract with vendors or electronic fingerprinting;
- The list of disqualifying offenses for peer specialist applicants, except as described above; and
- Authorization for peer specialist certification applicants to request an exemption from background screening disqualification.

The restructuring makes no substantive changes other than those described above.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 394.4573, F.S., relating to coordinated system of care; annual assessment, essential elements; measures of performance; system improvement grants; reports.
- Section 2:** Amends s. 394.4073, F.S., relating to background checks for service provider personnel.
- Section 3:** Amends s. 397.417, F.S., relating to peer specialists.
- Section 4:** Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If DCF chooses to directly certify peer specialists, DCF may experience an increase in revenue associated with fees collected from applicant peer specialists, the impact of which is indeterminate as the number of individuals who would seek certification is unknown. However, DCF has no authority to levy or collect fees from peer specialist certification applicants and the bill does not provide an appropriation to implement a certification process. Therefore, DCF will have to approve a third-party credentialing entity to certify peer specialists.

2. Expenditures:

DCF may experience an indeterminate increase in workload associated with an increase in the number of background screenings for peer specialists, which may increase the number of exemption requests.⁹⁸ However, exemption requests may be limited due to the reduction in disqualifying offenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who may otherwise be disqualified for certification as a peer specialist may become qualified under the changes proposed in the bill. Such individuals would be responsible for associated application costs and background screening fees.

Individuals providing recovery support services who are currently not required to be certified may be subject to certification. This will require them to pay fees for certification or may cause them to be ineligible for employment if they are unable to or choose not to become certified.

If DCF continues to use a credentialing entity in the peer specialist certification process, such credentialing entity may see an increase in revenue associated with a potential increase in applications for certification as a peer specialist.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law provides sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 18, 2022, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Limits the certification requirement for individuals who provide recovery support services to only peer specialists; and
- Requires background checks of peer specialists to screen for pending arrests.

This analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.