HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 255 Psychiatric Treatments
SPONSOR(S): Healthcare Regulation Subcommittee, Amesty and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 252

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	13 Y, 1 N, As CS	Curry	McElroy
2) Health & Human Services Committee			

SUMMARY ANALYSIS

Electroconvulsive therapy is a medical procedure most commonly used for patients who suffer with major depression or bi-polar, severe persistent suicidal ideation, mania, or schizophrenia, and who have not responded to other treatments or medications. Psychosurgery is a type of surgical procedure of the brain used to treat certain mental health disorders.

CS/HB 255 prohibits electroconvulsive treatments and psychosurgical procedures from being performed on a person younger than 16 years of age unless a physician certifies in writing that the treatment is medically necessary and two psychiatrists, who do not work within the same medical practice, agree in writing that that the treatment is appropriate for the patient.

The bill requires the patient to give informed written consent before receiving an electroconvulsive treatment or a psychosurgical procedure.

For patients 16 and older, the bill requires electroconvulsive treatments and psychosurgical procedures to only be performed by a physician, and requires a second physician, not directly involved with the patient, to agree that a proposed electroconvulsive treatment or psychosurgical procedure is appropriate prior to the treatment or procedure being performed.

The bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

- **Emotional well-being**- Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being**- Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being**- Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or mental health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.[4] During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22%.[5]

Mental Health Treatments

There are more than 200 types of mental health disorders.[6] Some of the most common types include:[7]

- Anxiety disorders, including panic disorder, obsessive-compulsive disorder, and phobias;
- Depression, bipolar disorder, and other mood disorders;
- Eating disorders;
- Personality disorders;
- Post-traumatic stress disorder; and
- Psychotic disorders,[8] including schizophrenia.

[1] World Health Organization, *Mental Health: Strengthening Our Response,* https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited January 21, 2024).
[2] Centers for Disease Control and Prevention, *Mental Health Basics*, http://medbox.iiab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm (last visited January 21, 2024).
[3] *Id*.
[4] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited January 21, 2024).
[5] *Id*.
[6] Cleveland Clinic, *Mental Health Disorders*, available at https://my.clevelandclinic.org/health/diseases/22295-mental-health-disorders, (last visited January 29, 2024).
[7] National Library of Medicine, *Mental Disorders,* available at https://medlineplus.gov/mentaldisorders.html, (last visited January 29, 2024).
[8] Psychotic disorders, also called psychoses, are severe mental disorders that cause abnormal thinking and perceptions. People with psychoses lose touch with reality. Two of the main symptoms are delusions and hallucinations. See National Library of Medicine, *Psychotic Disorders*, available at https://medlineplus.gov/psychoticdisorders.html, (last visited January 29, 2024).

Treatment for mental illness depends on the type of mental disorder the individuals has and the severity. Treatment may include, medication, psychotherapy, hospital and residential treatment programs, brain stimulation treatments and neurosurgical treatments for mental disorders.[9]

- **Medication** is popular treatment method for mental disorders. While they do not cure mental illness, they often help to significantly improve symptoms. Medications may also make other treatment plans, such as such as psychotherapy, more effective.[10] Common psychiatric medications include antidepressants, anti-anxiety medications, mood-stabilizers, and antipsychotics.[11]

- **Psychotherapy**, also referred to as talk therapy, is the most common treatment of mental disorders.[12] Psychotherapy involves the individual talking about his or her condition with a mental health professional. During psychotherapy the person learns about their condition, moods, feelings, thoughts, and behavior and acquire coping and stress management skills.[13] Psychotherapy is typically done one-on-one, but can be done in group settings.[14]

- **Hospital and residential treatment programs** are generally recommended when the mental illness becomes severe and the person is unable to properly care for him- or herself or when the individual is in immediate danger of harming him- or herself. Hospital and residential treatment options include 24-hour inpatient care, intensive outpatient treatment, partial or day hospitalization, or residential treatment, which offers a temporary supportive housing.[15]

- **Brain stimulation treatments** are generally reserved for situations in which medications and psychotherapy have not worked. This treatment is used to treat severe symptoms of mental disorders, including depression. Brain stimulation treatments include electroconvulsive therapy, repetitive transcranial magnetic stimulation,[16] deep brain stimulation[17] and vagus nerve stimulation.[18]

- **Neurosurgical treatment for mental disorders**, also known as psychosurgery, is a surgical procedure performed on the brain by a neurosurgeon. This procedure is used to treat patients with severe and incapacitating mental disorders who have not responded to other treatments.

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[9] Mayo Clinic, *Mental Illness: Diagnosis*, available at https://www.mayoclinic.org/diseases-conditions/mental-illness/diagnosis-treatment/drc-20374974, and Victoria Department of Health, *Neurosurgery for Mental Illness*, available at https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/neurosurgery-for-mental-illness (last visited January 29, 2024).
[10] Mayo Clinic, *Mental Illness: Diagnosis*, available at https://www.mayoclinic.org/diseases-conditions/mental-illness/diagnosis-treatment/drc-20374974, and FamilyDoctor.Org, *Different Types of Mental Health Treatment*, at https://familydoctor.org/different-types-mental-health-treatment/, (last visited January 29, 2024).
[11] Mayo Clinic, *Mental Illness: Diagnosis*, available at https://www.mayoclinic.org/diseases-conditions/mental-illness/diagnosis-treatment/drc-20374974, (last visited January 29, 2024).
[12] Family Doctor.Org, *Different Types of Mental Health Treatment*, at https://familydoctor.org/different-types-mental-health-treatment/, (last visited January 29, 2024).
[13] Supra, note 11.
[14] Supra, note 12.
[15] Supra, note 11.
[16] Transcranial magnetic stimulation is a noninvasive procedure that uses magnetic fields to stimulate nerve cells in the brain to improve symptoms of major depression. See. Mayo Clinic, *Transcranial Magnetic Stimulation*, available at https://www.mayoclinic.org/tests-procedures/transcranial-magnetic-stimulation/about/pac-20384625, (last visited January 29, 2024).
[17] Deep brain stimulation is a procedure that involves implanting electrodes within areas of the brain. The electrodes produce electrical impulses that affect brain activity to treat certain medical conditions. Deep brain stimulation is commonly used to treat conditions such as Parkinson's, epilepsy, tourette syndrome, and obsessive-compulsive disorder. See Mayo Clinic, *Deep Brain Stimulation*, available at https://www.mayoclinic.org/tests-procedures/deep-brain-stimulation/about/pac-20384562, (last visited January 29, 2024).
[18] Vagus nerve stimulation is a procedure that involves using a device to stimulate the vagus nerve to send electrical impulses to the brainstem. The impulses change brain functions and alter brain activity to treat various medical conditions, such as treatment-resistant depression, epilepsy, or to help with rehabilitation when recovering from a stroke. Also see Mayo Clinic, *Vagus Nerve Stimulation*, available at https://www.mayoclinic.org/tests-procedures/vagus-nerve-stimulation/about/pac-20384565, National Alliance on Mental Illness, *ECT, TMS and Other Brain Stimulation Therapies,* available at https://www.nami.org/About-Mental-Illness/Treatments/ECT-TMS-and-Other-Brain-Stimulation-Therapies, and Supra, note 9. (last visited January 29, 2024).

Neurosurgery is mostly used to treat severe depression, obsessive-compulsive disorder, and anxiety disorders.[19] In some cases neurosurgery may also be used to treat schizophrenia.[20]

Electroconvulsive Therapy

Electroconvulsive therapy (ECT) is a medical procedure most commonly used for patients who suffer with major depression or bi-polar, serve persistent suicidal ideation, mania, or schizophrenia and who have not responded to other treatments or medications.[21] During the procedure, electrodes are placed on the patients head and a small electric current is passed through the electrodes into the brain to intentionally trigger a brief seizure.[22] This dramatically increases the patient's brain activity which creates changes in the brain chemistry that can quickly improve certain mental health conditions.[23] ECT is performed under general anesthesia and is typically administered by a medically trained team of anesthesiologists, psychiatrists, nurses, or physician assistants.[24]

ECT treatments generally involve a series of six to 12 treatments given two or three times a week for three or four weeks. The number of treatments depends of the severity of the patient's symptoms and how quickly the patient responds to treatment.[25] Prior to having an ECT treatment, a patient may be required to undergo a full evaluation, which may include, medical history, a complete physical exam, psychiatric evaluation, basic blood test, and an electrocardiogram (ECG) to check heart health.[26]

Risks of ECT Treatment

While most consider ECT to be generally safe, there are several risks and side effects associated with the procedure. The risks and side effects may include:[27]

- **Confusion.** A patient may immediately experience confusion after treatment, which generally last from a few minutes to several hours. However, in rare cases confusion may last several days or longer. Confusion is typically more noticeable in older adults.

- **Memory loss.** A patient may experience temporary memory loss or have temporary difficulty learning. Some patients may have difficultly remembering events that occurred in the days, weeks, or even months prior to treatment. Memory problems usually improve within a couple of months after treatment. However, some patients may experience memory loss for longer periods, including permanent gaps in memory.[28]

- **Physical side effects.** The most common physical side effects that patients experience include nausea, headache, fatigue, jaw pain and muscle aches. These side effects can generally be treated with medication and resolve quickly.

[19] Victoria Department of Health, *Neurosurgery for Mental Illness*, available at https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/neurosurgery-for-mental-illness and Very Well Mind, *What is Psychosurgery?*, available at https://www.verywellmind.com/what-is-psychosurgery-5114483, (last visited January 30, 2024).
[20] Hellovaia.com, *Psychosurgery*, available at https://www.hellovaia.com/explanations/psychology/psychological-treatment/psychosurgery/, (last visited January 30, 2024).
[21] Central Florida Behavioral Hospital, *Electroconvulsive Therapy (ECT)*, available at https://centralfloridabehavioral.com/programs-services/electroconvulsive-therapy/, and American Psychiatric Association, *What is Electroconvulsive Therapy ECT*, available at https://www.psychiatry.org/patients-families/ect, (last visited January 29, 2024).
[22] WebMd, *ECT and Other Procedures for Schizophrenia*, available at https://www.webmd.com/schizophrenia/electroconvulsive-therapy, and Mayo Clinic, *Electroconvulsive Therapy*, available at https://www.mayoclinic.org/tests-procedures/electroconvulsive-therapy/about/pac-20393894, (last visited January 29, 2024).
[23] Mayo Clinic, *Electroconvulsive Therapy*, available at https://www.mayoclinic.org/tests-procedures/electroconvulsive-therapy/about/pac-20393894, (last visited January 29, 2024).
[24] American Psychiatric Association, *What is Electroconvulsive Therapy ECT*, available at https://www.psychiatry.org/patients-families/ect, (last visited January 29, 2024).
[25] Supra, note 21.
[26] *Id.*
[27] *Id.*
[28] Supra, note 22.

- **Medical complications.** Medical complications may include complications related to the general risks of anesthesia. Other medical complications include the risk of heart problems. During ECT, the patient's heart rate and blood pressure are elevated, which could lead to serious heart problems.

Psychosurgery

Psychosurgery is a brain surgery performed to treat certain psychiatric disorders involving the selective surgical removal or destruction of nerve pathways for purposes of influencing behavior.[29] The basic concept behind psychosurgery is that if certain parts of the brain are responsible for certain symptoms, then destroying the brain tissue connecting those parts of the brain will essentially help to eliminate those symptoms.[30]

The most well-known example of psychosurgery is the lobotomy.[31] This procedure involved drilling two small holes in a patient's skull and cutting the nerve fibers that connected the front of the brain, which controls personality, decision-making and reasoning, with the other regions of the brain.[32] This procedure often produced serious and irreversible side effects, with many patients left severely brain damaged or dead. Lobotomies were very popular during the 1930s and 1940s. However, upon the introduction of antipsychotic drugs in the 1950s, the use of psychosurgery vastly declined until eventually ending in the mid-1970s.[33] During the late 1990s, psychosurgery began reemerging as a treatment option for psychiatric or mental disorders. However, the procedure still remains banned in some countries.[34]

Modern Psychosurgery

While psychosurgery procedures such as lobotomies are no longer used, modern psychosurgical procedures are used to treat extreme cases of mental disorders when medications and behavioral therapy have failed. However, the surgical techniques used now to perform psychosurgeries are vastly different. The procedures are also much safer and more effective.[35] Modern psychosurgery procedures have fewer detrimental side effects and the risk of permanent damage to the brain is substantially lower.[36] Modern psychosurgery involves destroying tiny bits of brain tissue using heat.[37] The specific areas of the brain that are targeted during the procedure do not effect the patient's intellectual functioning or quality of life.[38]The primary object of the procedure is to control, change, or affect behavioral or emotional disturbances of the patient.[39]

Psychosurgical Procedures

[29] Very Well Mind, What is Psychosurgery?, available at https://www.verywellmind.com/what-is-psychosurgery-5114483, (last visited January 30, 2024).
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.* Also see Springer Link, *Concerns About Concerns About Psychiatric Neurosurgery and How They Can Be Overcome: Recommendations for Responsible Research*, (February 2022), available at https://link.springer.com/content/pdf/10.1007/s12152-022-09485-z.pdf, (last visited January 30, 2024).
[34] Springer Link, *Concerns About Concerns About Psychiatric Neurosurgery and How They Can Be Overcome: Recommendations for Responsible Research*, (February 2022), available at https://link.springer.com/content/pdf/10.1007/s12152-022-09485-z.pdf, (last visited January 30, 2024).
[35] *Id.*
[36] Support the Workers, Psychosurgery: Prefrontal Lobotomy, Cingulotomy, Capsulotomy. Brief History and Modern Use, *available at https://supporttheworkers.org/psychosurgery/, (last visited January 30, 2024).*
[37] Supra, note 28.
[38] *Id.*
[39] Supra, note 33.

The most common psychosurgical procedures used today are anterior cingulotomy, subcaudate tractotomy, limbic leucotomy, and anterior capsulotomy. However, only anterior cingulotomy, anterior capsulotomy, and limbic leucotomy are practiced most often.[40]

- **Anterior cingulotomy** is neurosurgical procedure performed on the anterior cingulate. The anterior cingulate is the part of the brain that is involved in alerting a person to a task's urgency and giving the feeling of satisfaction when the task is complete. Anterior cingulotomy is primarily used to treat patients with treatment-resistant obsessive-compulsive disorder and sometimes major depressive disorder. The procedure has been used since the 1960s. An anterior cingulotomy is performed by a neurosurgeon drilling a small hole into the patient's skull then using a blade to cut a path to access the anterior cingulate cortex. A heated probe is then used to burn away approximately half a teaspoon of the brain tissue in the anterior cingulate cortex. Side effects of the procedure include risk of infection and seizures.[41]

- **Anterior capsulotomy** is used to reduce symptoms of treatment-resistant obsessive-compulsive disorder. The procedure is similar to anterior cingulotomy procedure. However, instead of targeting the cingulate cortex, tiny bits of brain tissue in the region of the brain near the thalamus[42] (called the anterior capsule), are burned away. Anterior capsulotomy is a slightly riskier procedure than anterior cingulotomy and may cause immediate side effects including cerebral edema, delirium, headache, seizures, urinary incontinence, and long-term weight gain.[43]

- **Subcaudate tractotomy** is a procedure that targets the white matter in the brain. The white matter of the brain is made up of a large network of nerve fibers in the brain that allow for the exchange of information and communication between different areas of the brain. It is call white matter because the nerve fibers are covered with a protective sheath called myelin, that gives it a white color.[44] Subcaudate tractotomy is used to treat patients with treatment-resistant depression, anxiety, and obsessive-compulsive disorder.[45] The procedure is considered just as effective as anterior cingulotomy, but appears to cause more side effects.[46]

- **Limbic leucotomy** is a combination of two procedures, the anterior cingulotomy and subcaudate tractotomy. This procedure is usually performed if a patient does not respond to anterior cingulotomy. The side effects are typically short term and include, transient hallucinations, amnesia, and mania.[47]

The recovery process after psychosurgery varies depending on the patient and procedure. Typically, a patient remains in the hospital after surgery, followed by a short recovery at home. The hospital stay can range from several days to two to three weeks. Most patients are able to see the results nine months to a year after surgery.[48]

Electroconvulsive and Psychosurgical Procedures in Florida

Current law requires written patient consent for electroconvulsive therapy or psychosurgery. If the patient is a minor or incompetent, consent must be given by the patient's guardian. Written consent must be obtained after disclosure to the patient or to the patient's guardian, if applicable, the purpose of

[40] Supra, note 28.
[41] *Id.*
[42] The thalamus is an egg-shaped structure in the middle of the brain. It is the relay station of all incoming motor movement of the brain and sensory information, hearing, taste, sight, and touch, but not smell, from the body to the brain. Information passes through the thalamus before being routed to the brain's cerebral cortex, the outermost layer of the brain. See Cleveland Clinic, *Thalamus,* available at https://my.clevelandclinic.org/health/body/22652-thalamus, (last visited January 30, 2024).
[43] Supra, note 28.
[44] Cleveland Clinic, *White Matter Disease,* available at https://my.clevelandclinic.org/health/diseases/23018-white-matter-disease, (last visited January 30, 2024).
[45] Supra, note 28.
[46] *Id.*
[47] *Id.*
[48] Supra, note 28.

the procedure, common side effects after the procedure, the approximate number of procedures considered necessary for treatment, and the patient or the patient's guardian's right to revoke any consent given prior to or between treatments.[49] Current law does not specify the method (oral or written) in which disclosure to the patient must be given.

Before electroconvulsive therapy or a psychosurgery procedure may be performed, a second physician, who is not directly involved with the patient, must review the patient's treatment record and agree to the proposed treatment in writing. The agreement must be signed by both physicians and documented in the patient's treatment record.[50]

Current law does not define electroconvulsive or psychosurgical procedures.

Effect of the Bill

CS/HB 255 prohibits electroconvulsive treatment and psychosurgical procedures from being performed on a person younger than 16 years of age unless:

- A physician certifies in writing, that in reasonable medical judgement, there is a medical necessity for electroconvulsive treatment or a psychosurgical procedure.
- Two psychiatrists, as defined under s. 394.455, who do not work within the same medical practice, agree in writing, in reasonable medical judgement, that the proposed electroconvulsive treatment or psychosurgical procedure is appropriate for the patient. Such agreement must be signed by both psychiatrists and documented in the patient's treatment record.

The bill requires electroconvulsive treatment or psychosurgical procedures to only be performed by a physician. The bill requires informed written consent. The informed written consent must include written disclosure and must be obtained from the patient by the physician prior to electroconvulsive treatment or a psychosurgical procedure.

For patients 16 and older, the bill requires a second physician, not directly involved with the patient, to agree that the proposed electroconvulsive treatment or psychosurgical procedure is appropriate prior to the patient's physician performing the proposed treatment or procedure. Current law only requires the physicians to agree to the proposed procedure. The bill makes it clear that the physicians must agree on the appropriateness of the treatment or procedure to be performed on the patient.

The bill defines electroconvulsive treatment to mean psychiatric treatment that involves sending an electric current through the brain while the patient is under anesthesia and defines a psychosurgical procedure as a neurological surgery used to treat a mental disorder.

The bill provides an effect date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 458.325, F.S., relating to electroconvulsive and psychosurgical procedures.
Section 2: Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[49] S. 458.325(1), F.S.
[50] S. 458.325(2), F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The department has sufficient rulemaking authority in current law to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Healthcare Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibits electroconvulsive treatments and psychosurgical procedures from being performed on a person younger than 16 years of age unless:
  - A physician certifies in writing, that in reasonable medical judgement, there is a medical necessity for electroconvulsive treatment or a psychosurgical procedure.
  - Two psychiatrists, as defined under s. 394.455, who do not work within the same medical practice, agree in writing, in reasonable medical judgement, that the proposed electroconvulsive treatment or psychosurgical procedure is appropriate for the patient. Such agreement must be signed by both psychiatrists and documented in the patient's treatment record.

The analysis is drafted to the committee substitute as passed by the Healthcare Regulation Subcommittee.