HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 951 Behavioral Health
SPONSOR(S): Children, Families & Seniors Subcommittee, Silvers and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1306

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	14 Y, 0 N, As CS	Curry	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Florida Mental Health Act, commonly referred to as the Baker Act governors the procedures for mental health examination and treatment, including voluntary and involuntary examinations while protecting the rights of all individuals examined or treated for mental illness in Florida.

Individuals in an acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis. An involuntary examination may be initiated in one of three ways, including by a law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to an appropriate, or the nearest, receiving facility for examination.

CS/HB 951 requires law enforcement officers, when transporting a minor, to provide the parent or legal guardian of the minor with the name, address, and contact information for the receiving facility to which the officer is transporting the minor to before departing, if the minor's parent or legal guardian is present, subject to concerns for the minor's safety and welfare.

The bill creates the Office of Children's Behavioral Health Ombudsman (Office) within the Department of Children and Families (DCF) for the purpose of being a central point to receive complaints on behalf of children and adolescents with behavioral health disorders receiving state-funded services and to use this information to improve the child and adolescent mental health treatment and support. Subject to available resources, the bill requires the Office to:

- Receive and direct to the appropriate contact within the department, at the Agency for Health Care Administration, or the appropriate organizations providing behavioral health services complaints from children and adolescents and their families about the mental health treatment and support system.
- Maintain records of complaints received and the actions taken.
- Be a resource to identify and explain relevant polices or procedures to children, adolescents and their families about the child and adolescent mental health treatment and support system.
- Provide recommendations to the department to address systemic problems within the mental health treatment and support system that are leading to complaints. The department shall include an analysis of complaints and these recommendations in the report required under s. 394.4573, F.S.
- Engage in functions that may improve the child and adolescent mental health treatment and support system.

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 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 Safety Net Services

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 for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.

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.[6] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.[7] MEs were fully implemented statewide in 2013, serving all geographic regions.

[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] Ch. 2001-191, Laws of Fla.
[7] Ch. 2008-243, Laws of Fla.

DCF currently contracts with seven MEs for behavioral health services throughout the state. These entities do not provide direct services; rather, they allow the department's funding to be tailored to the specific behavioral health needs in the various regions of the state.[8]

Coordinated System of Care

Managing entities are required to promote the development and implementation of a coordinated system of care.[9] 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.[10] A community or region provides a coordinated system of care for those with 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 managing entities.[11] 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.[12] DCF must use performance-based contracts to award grants.[13]

There are several essential elements which make up a coordinated system of care, including:[14]

- 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:[15]

- 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.

[8] DCF, *Managing Entities,* available at https://www.myflfamilies.com/services/samh/prov/*d*ers/managing-entities, (last visited January 24, 2024).
[9] S. 394.9082(5)(d), F.S.
[10] S. 394.4573(1)(c), F.S.
[11] S. 394.4573(3), F.S. The Legislature has not funded system improvement grants.
[12] *Id.*
[13] *Id.*
[14] S. 394.4573(2), F.S.
[15] S. 394.495(4), F.S

DCF must define the priority populations which would benefit from receiving care coordination.[16] In defining priority populations, DCF must consider 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.

MEs are required to conduct a community behavioral health care needs assessment once every three years in the geographic area served by the managing entity, which identifies needs by sub-region.[17] The assessments must be submitted to DCF for inclusion in the state and district substance abuse and mental health plan.[18]

The Baker Act

The Florida Mental Health Act, commonly referred to as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.[19] The Act includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.[20]

Involuntary Examination

Individuals in an acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.[21] An involuntary examination is required if there is reason to believe that the person has a mental illness and, because of his or her mental illness, has refused voluntary examination, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to that person's well-being, and such harm is unavoidable through help of willing family members or friends, or will cause serious bodily harm to him or herself or others in the near future based on recent behavior.[22]

An involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;[23]
- A qualified professional (physician, clinical psychologist, psychiatric nurse, an autonomous advanced practice registered nurse, mental health counselor, marriage and family therapist, or clinical social worker) executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion; or[24]
- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination.[25]

Involuntary examination patients must be taken to a facility that has been designated by the Department of Children and Families (DCF) as a receiving facility. Receiving facilities, often referred to as Baker Act receiving facilities, are public or private facilities designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance

[16] S. 394.9082(3)(c), F.S.
[17] S. 394.9082(5)(b), F.S.
[18] S. 394.75(3), F.S.
[19] The Baker Act is contained in Part I of ch. 394, F.S.
[20] S. 394.459, F.S.
[21] Ss. 394.4625 and 394.463, F.S.
[22] S. 394.463(1), F.S.
[23] S. 394.463(2)(a)1., F.S. The order of the court must be made a part of the patient's clinical record.
[24] S. 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.
[25] S. 394.463(2)(a)2., F.S.

abuse evaluation and to provide treatment or transportation to the appropriate service provider.[26] Under the Baker Act, a receiving facility must examine an involuntary patient within 72 hours of arrival.[27]

Transportation by Law Enforcement Officers

When transporting an individual who appears to meet the criteria for involuntary examination, the law enforcement officer must deliver the person to an appropriate, or the nearest, designated receiving center for examination. Current law requires the officer to execute a written report detailing the circumstances under which the person was taken into custody, and to make the report a part of the patient's clinical record. The report must also include all emergency contact information for the person that is readily accessible to the officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles.

Current law authorizes the receiving facility to use the emergency contact information obtained by the law enforcement officer solely for the purpose of informing listed emergency contacts of the patient about the patient's whereabouts. The law does not require law enforcement officers, when transporting a minor, to provide the parent or legal guardian of the minor with the location or contact information for the receiving facility to which the office is transporting the minor.

Involuntary Examination of Minors

During fiscal year (FY) 2021-2022, 170,048 involuntary examinations were conducted for 115,239 individuals under the Baker Act;[28] of those examined, just over 36,000 were minors.[29] Individuals with multiple involuntary examinations accounted for a disproportionate number of examinations. Of the total involuntary examinations, there were 21.78 percent of individuals with two or more exams in FY 2021-2022. These individuals accounted for 46.99 percent of involuntary exams during the three-year period for FY 2019-2020 through FY 2021-2022.[30]

Approximately one in five (21.23 percent) of children with an involuntary examination in FY 2021-2022 had two or more involuntary exams. These children accounted for 44.93 percent of the of the involuntary examinations for the year.[31] According to the annual Baker Act Report, 12.40 percent of Baker Act examinations for children were initiated while at school.[32]

Effect of the Bill

When transporting a minor for involuntary examination, CS/HB 951 requires law enforcement officers to provide the parent or legal guardian of the minor with the name, address, and contact information for the receiving facility to which the officer is transporting the minor to before departing, if the minor's parent or legal guardian is present, subject to any safety and welfare concerns for the minor.

CS/HB 951 creates the Office of Children's Behavioral Health Ombudsman (Office) within DCF for the purpose of being a central point to receive complaints on behalf of children and adolescents with behavioral health disorders receiving state-funded services and to use this information to improve the child and adolescent mental health treatment and support system. The bill requires the Office to:

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[26] S. 394.455(40), F.S. This term does not include a county jail.
[27] S. 394.463(2)(g), F.S.
[28] DCF, *The Baker Act Florida Mental Health Act Fiscal Year 2021-2022 Report,* available at https://www.myflfamilies.com/sites/default/files/2023-07/FY%202021%202022%20Annual%20Report.pdf, (last visited January 21, 2024).
[29] DCF, *Report on Involuntary Examination of Minors,* available at https://www.usf.edu/cbcs/baker-act/documents/ba_minors_report_nov2023.pdf, (last visited January 21, 2024).
[30] *Id.*
[31] *Id.*
[32] DCF, *The Baker Act Florida Mental Health Act Fiscal Year 2021-2022 Report,* available at https://www.myflfamilies.com/sites/default/files/2023-07/FY%202021%202022%20Annual%20Report.pdf, (last visited January 21, 2024).

- Receive and direct to the appropriate contact within the department, at the Agency for Health Care Administration, or the appropriate organizations providing behavioral health services complaints from children and adolescents and their families about the mental health treatment and support system.
- Maintain records of complaints received and the actions taken.
- Be a resource to identify and explain relevant polices or procedures to children, adolescents and their families about the child and adolescent mental health treatment and support system.
- Provide recommendations to the department to address systemic problems within the mental health treatment and support system that are leading to complaints. The department shall include an analysis of complaints and these recommendations in the report required under s. 394.4573, F.S.
- Engage in functions that may improve the child and adolescent mental health treatment and support system.

DCF and managing entities must place contact information for the Office prominently on a webpage related to children's behavioral health services on their websites.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 394.463, F.S., relating to involuntary examination.
Section 2: Creates s. 394.4915, F.S., relating to the Office of Children's Behavioral Health Ombudsman.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. DCF's obligations under the bill are subject to available resources.

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 bill does not provide rulemaking authority to implement the bill. However, the department has sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES