

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Children, Families &
2 Seniors Subcommittee
3 Representative Massullo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (a), (b), and (c) of subsection (5)
8 of section 394.459, Florida Statutes, are amended, present
9 paragraphs (d), (e), and (f) are redesignated as paragraphs (e),
10 (f), and (g), respectively, and a new paragraph (d) is added to
11 that subsection, to read:

12 394.459 Rights of patients.—

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

14 (a) Each person receiving services in a facility providing
15 mental health services under this part has the right to
16 communicate freely and privately with persons outside the

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17 facility unless a qualified professional determines ~~it is~~
18 ~~determined~~ that such communication is likely to be harmful to
19 the person or others in a manner directly related to the
20 person's clinical well-being, the clinical well-being of other
21 patients, or the general safety of staff. Each facility shall
22 make available as soon as reasonably possible to persons
23 receiving services a telephone that allows for free local calls
24 and access to a long-distance service. A facility is not
25 required to pay the costs of a patient's long-distance calls.
26 The telephone shall be readily accessible to the patient and
27 shall be placed so that the patient may use it to communicate
28 privately and confidentially. The facility may establish
29 reasonable rules for the use of this telephone, provided that
30 the rules do not interfere with a patient's access to a
31 telephone to report abuse pursuant to paragraph (f) ~~(e)~~.

32 (b) Each patient admitted to a facility under the
33 provisions of this part shall be allowed to receive, send, and
34 mail sealed, unopened correspondence; and no patient's incoming
35 or outgoing correspondence shall be opened, delayed, held, or
36 censored by the facility unless a qualified professional
37 determines that such correspondence is likely to be harmful to
38 the patient or others in a manner directly related to the
39 patient's clinical well-being, the clinical well-being of other
40 patients, or the general safety of staff. If there is reason to
41 believe that such correspondence ~~it~~ contains items or substances

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42 which may be harmful to the patient or others, ~~in which case~~ the
43 administrator may direct reasonable examination of such mail and
44 may regulate the disposition of such items or substances.

45 (c) Each facility must permit immediate access to any
46 patient, subject to the patient's right to deny or withdraw
47 consent at any time, by the patient's family members, guardian,
48 guardian advocate, representative, Florida statewide or local
49 advocacy council, or attorney, unless a qualified professional
50 determines that such access would be detrimental to the patient
51 in a manner directly related to the patient's clinical well-
52 being, the clinical well-being of other patients, or the general
53 safety of staff.

54 (d) If a patient's right to communicate with outside
55 persons; receive, send, or mail sealed, unopened correspondence;
56 or to receive visitors is restricted by the facility, written
57 notice of such restriction and the reasons for the restriction
58 shall be served on the patient, the patient's attorney, and the
59 patient's guardian, guardian advocate, or representative; a
60 qualified professional must document any restriction within 24
61 hours and such restriction shall be recorded on the patient's
62 clinical record with the reasons therefor. The restriction of a
63 patient's right to communicate or to receive visitors shall be
64 reviewed at least every 3 7 days. The right to communicate or
65 receive visitors shall not be restricted as a means of

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66 punishment. Nothing in this paragraph shall be construed to
67 limit the provisions of paragraph (e) ~~(d)~~.

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

73 (f)~~(e)~~ Each patient receiving mental health treatment in
74 any facility shall have ready access to a telephone in order to
75 report an alleged abuse. The facility staff shall orally and in
76 writing inform each patient of the procedure for reporting abuse
77 and shall make every reasonable effort to present the
78 information in a language the patient understands. A written
79 copy of that procedure, including the telephone number of the
80 central abuse hotline and reporting forms, shall be posted in
81 plain view.

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

86 Section 2. Paragraph (b) of subsection (2) of section
87 394.4599, Florida Statutes, is amended to read:

88 394.4599 Notice.—

89 (2) INVOLUNTARY ADMISSION.—

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90 (b) A receiving facility shall give prompt notice of the
91 whereabouts of an individual who is being involuntarily held for
92 examination to the individual's guardian, guardian advocate,
93 health care surrogate or proxy, attorney or representative, or
94 other emergency contact identified through electronic databases
95 pursuant to s. 394.463(2)(a), by telephone or in person within
96 24 hours after the individual's arrival at the facility. Contact
97 attempts shall be documented in the individual's clinical record
98 and shall begin as soon as reasonably possible after the
99 individual's arrival.

100 Section 3. Paragraph (a) of subsection (2) of section
101 394.4615, Florida Statutes, is amended to read:

102 394.4615 Clinical records; confidentiality.—

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

104 (a) The patient or the patient's guardian authorizes the
105 release. The guardian or guardian advocate shall be provided
106 access to the appropriate clinical records of the patient. The
107 patient or the patient's guardian or guardian advocate may
108 authorize the release of information and clinical records to
109 appropriate persons to ensure the continuity of the patient's
110 health care or mental health care. A receiving facility must
111 document that, within 24 hours of admission, individuals
112 admitted on a voluntary basis have been provided with the option
113 to authorize the release of information from their clinical

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114 record to the individual's health care surrogate or proxy,
115 attorney, representative, or other known emergency contact.

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

119 394.463 Involuntary examination.—

120 (2) INVOLUNTARY EXAMINATION.—

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

123 1. A circuit or county court may enter an ex parte order
124 stating that a person appears to meet the criteria for
125 involuntary examination and specifying the findings on which
126 that conclusion is based. The ex parte order for involuntary
127 examination must be based on written or oral sworn testimony
128 that includes specific facts that support the findings. If other
129 less restrictive means are not available, such as voluntary
130 appearance for outpatient evaluation, a law enforcement officer,
131 or other designated agent of the court, shall take the person
132 into custody and deliver him or her to an appropriate, or the
133 nearest, facility within the designated receiving system
134 pursuant to s. 394.462 for involuntary examination. The order of
135 the court shall be made a part of the patient's clinical record.
136 A fee may not be charged for the filing of an order under this
137 subsection. A facility accepting the patient based on this order
138 must send a copy of the order to the department within 5 working

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139 days. The order may be submitted electronically through existing
140 data systems, if available. The order shall be valid only until
141 the person is delivered to the facility or for the period
142 specified in the order itself, whichever comes first. If a time
143 limit is not specified in the order, the order is valid for 7
144 days after the date that the order was signed.

145 2. A law enforcement officer shall take a person who
146 appears to meet the criteria for involuntary examination into
147 custody and deliver the person or have him or her delivered to
148 an appropriate, or the nearest, facility within the designated
149 receiving system pursuant to s. 394.462 for examination. The
150 officer shall execute a written report detailing the
151 circumstances under which the person was taken into custody,
152 which must be made a part of the patient's clinical record. The
153 report must include all emergency contact information for the
154 person that is readily accessible to the law enforcement
155 officer, including information available through electronic
156 databases maintained by the Department of Law Enforcement or by
157 the Department of Highway Safety and Motor Vehicles. Such
158 emergency contact information may be used by a receiving
159 facility only for the purpose of informing listed emergency
160 contacts of a patient's whereabouts and shall otherwise remain
161 confidential and exempt pursuant to s. 119.0712(2)(d). Any
162 facility accepting the patient based on this report must send a
163 copy of the report to the department within 5 working days.

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164 3. A physician, a physician assistant, a clinical
165 psychologist, a psychiatric nurse, an advanced practice
166 registered nurse registered under s. 464.0123, a mental health
167 counselor, a marriage and family therapist, or a clinical social
168 worker may execute a certificate stating that he or she has
169 examined a person within the preceding 48 hours and finds that
170 the person appears to meet the criteria for involuntary
171 examination and stating the observations upon which that
172 conclusion is based. If other less restrictive means, such as
173 voluntary appearance for outpatient evaluation, are not
174 available, a law enforcement officer shall take into custody the
175 person named in the certificate and deliver him or her to the
176 appropriate, or nearest, facility within the designated
177 receiving system pursuant to s. 394.462 for involuntary
178 examination. The law enforcement officer shall execute a written
179 report detailing the circumstances under which the person was
180 taken into custody. The report must include all emergency
181 contact information for the person that is readily accessible to
182 the law enforcement officer, including information available
183 through electronic databases maintained by the Department of Law
184 Enforcement or by the Department of Highway Safety and Motor
185 Vehicles. Such emergency contact information may be used by a
186 receiving facility only for the purpose of informing listed
187 emergency contacts of a patient's whereabouts and shall
188 otherwise remain confidential and exempt pursuant to s.

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189 119.0712(2)(d). The report and certificate shall be made a part
190 of the patient's clinical record. Any facility accepting the
191 patient based on this certificate must send a copy of the
192 certificate to the department within 5 working days. The
193 document may be submitted electronically through existing data
194 systems, if applicable.

195
196 When sending the order, report, or certificate to the
197 department, a facility shall, at a minimum, provide information
198 about which action was taken regarding the patient under
199 paragraph (g), which information shall also be made a part of
200 the patient's clinical record.

201 (e) The department shall receive and maintain the copies
202 of ex parte orders, involuntary outpatient services orders
203 issued pursuant to s. 394.4655, involuntary inpatient placement
204 orders issued pursuant to s. 394.467, professional certificates,
205 ~~and~~ law enforcement officers' reports, and reports relating to
206 the transportation of patients. These documents shall be
207 considered part of the clinical record, governed by the
208 provisions of s. 394.4615. These documents shall be used to
209 prepare annual reports analyzing the data obtained from these
210 documents, without information identifying patients, and shall
211 provide copies of reports to the department, the President of
212 the Senate, the Speaker of the House of Representatives, and the
213 minority leaders of the Senate and the House of Representatives.

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214 (f) A patient shall be examined by a physician or a
215 clinical psychologist, or by a psychiatric nurse performing
216 within the framework of an established protocol with a
217 psychiatrist at a facility without unnecessary delay to
218 determine if the criteria for involuntary services are met.
219 Emergency treatment may be provided upon the order of a
220 physician if the physician determines that such treatment is
221 necessary for the safety of the patient or others. The patient
222 may not be released by the receiving facility or its contractor
223 without the documented approval of a psychiatrist or a clinical
224 psychologist or, if the receiving facility is owned or operated
225 by a hospital or health system, or a nationally accredited
226 community mental health center, the release may also be approved
227 by a psychiatric nurse performing within the framework of an
228 established protocol with a psychiatrist, or an attending
229 emergency department physician with experience in the diagnosis
230 and treatment of mental illness after completion of an
231 involuntary examination pursuant to this subsection. A
232 psychiatric nurse may not approve the release of a patient if
233 the involuntary examination was initiated by a psychiatrist
234 unless the release is approved by the initiating psychiatrist.

235 (g) The examination period must be for up to 72 hours. For
236 a minor, the examination shall be initiated within 12 hours
237 after the patient's arrival at the facility. Within the
238 examination period ~~or, if the examination period ends on a~~

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239 ~~weekend or holiday, no later than the next working day~~
240 ~~thereafter~~, one of the following actions must be taken, based on
241 the individual needs of the patient:

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

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

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

251 4. A petition for involuntary services shall be filed in
252 the circuit court if inpatient treatment is deemed necessary or
253 with the criminal county court, as defined in s. 394.4655(1), as
254 applicable. When inpatient treatment is deemed necessary, the
255 least restrictive treatment consistent with the optimum
256 improvement of the patient's condition shall be made available.
257 When a petition is to be filed for involuntary outpatient
258 placement, it shall be filed by one of the petitioners specified
259 in s. 394.4655(4) (a). A petition for involuntary inpatient
260 placement shall be filed by the facility administrator. If a
261 patient's 72-hour examination period ends on a weekend or
262 holiday, and the receiving facility:

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263 a. Intends to file a petition for involuntary services,
264 such patient may be held at a receiving facility through the
265 next working day thereafter and such petition for involuntary
266 services must be filed no later than such date. If the receiving
267 facility fails to file a petition for involuntary services at
268 the close of the next working day, the patient shall be released
269 from the receiving facility.

270 b. Does not intend to file a petition for involuntary
271 services, a receiving facility may postpone release of a patient
272 until the next working day thereafter only if a qualified
273 professional documents that adequate discharge planning and
274 procedures in accordance with s. 394.468 are not possible until
275 the next working day.

276 (5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND
277 TREATMENT; PENALTIES.-

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

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

281 2. Cause or otherwise secure, or conspire with or assist
282 another to cause or secure, any emergency or other involuntary
283 procedure of another person under false pretenses.

284 (b) A person who violates this subsection commits a
285 misdemeanor of the first degree, punishable as provided in s.
286 775.082 and by a fine not exceeding \$5,000.

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287 Section 5. Section 394.468, Florida Statutes, is amended
288 to read:

289 394.468 Admission and discharge procedures.—

290 (1) Admission and discharge procedures and treatment
291 policies of the department are governed solely by this part.
292 Such procedures and policies shall not be subject to control by
293 court procedure rules. The matters within the purview of this
294 part are deemed to be substantive, not procedural.

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

298 (a) Follow-up behavioral health appointments;

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

300 and

301 (c) Information pertaining to:

302 1. Available living arrangements;

303 2. Transportation; and

304 3. Recovery support opportunities.

305 Section 6. Paragraph (c) of subsection (3) of section
306 394.9086, Florida Statutes, is amended, a new paragraph (d) is
307 added to that subsection, and subsection (5) of that section is
308 amended, to read:

309 394.9086 Commission on Mental Health and Substance Abuse.—

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

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311 (c) The commission shall convene no later than September
312 1, 2021. The commission shall meet quarterly or upon the call of
313 the chair. The commission may ~~shall~~ hold its meetings in person
314 at locations throughout the state or via teleconference or other
315 electronic means.

316 (d) Members of the commission are entitled to receive
317 reimbursement for per diem and travel expenses pursuant to s.
318 112.061.

319 (e) Notwithstanding any other law, the commission may
320 request and shall be provided with access to any information or
321 records, including exempt or confidential and exempt information
322 or records, which are necessary for the commission to carry out
323 its duties. Information or records obtained by the commission
324 which are otherwise exempt or confidential and exempt shall
325 retain such exempt or confidential and exempt status, and the
326 commission may not disclose any such information or records.

327 (5) REPORTS.—By January 1, 2023 ~~September 1, 2022~~, the
328 commission shall submit an interim report to the President of
329 the Senate, the Speaker of the House of Representatives, and the
330 Governor containing its findings and recommendations on how to
331 best provide and facilitate mental health and substance abuse
332 services in the state. The commission shall submit its final
333 report to the President of the Senate, the Speaker of the House
334 of Representatives, and the Governor by September 1, 2023.

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

337 397.601 Voluntary admissions.—

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

344 Section 8. Section 397.6772, Florida Statutes, is amended
345 to read:

346 397.6772 Protective custody without consent.—

347 (1) If a person in circumstances which justify protective
348 custody as described in s. 397.677 fails or refuses to consent
349 to assistance and a law enforcement officer has determined that
350 a hospital or a licensed detoxification or addictions receiving
351 facility is the most appropriate place for the person, the
352 officer may, after giving due consideration to the expressed
353 wishes of the person:

354 (a) Take the person to a hospital or to a licensed
355 detoxification or addictions receiving facility against the
356 person's will but without using unreasonable force. The officer
357 shall use the standard form developed by the department pursuant
358 to s. 397.321 to execute a written report detailing the
359 circumstances under which the person was taken into custody. The

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360 report must include all emergency contact information for the
361 person that is readily accessible to the law enforcement
362 officer, including information available through electronic
363 databases maintained by the Department of Law Enforcement or by
364 the Department of Highway Safety and Motor Vehicles. Such
365 emergency contact information may be used by a hospital or
366 licensed detoxification or addictions receiving facility only
367 for the purpose of informing listed emergency contacts of a
368 patient's whereabouts and shall otherwise remain confidential
369 and exempt pursuant to s. 119.0712(2)(d). The written report
370 shall be included in the patient's clinical record; or

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

374
375 Such detention is not to be considered an arrest for any
376 purpose, and no entry or other record may be made to indicate
377 that the person has been detained or charged with any crime. The
378 officer in charge of the detention facility must notify the
379 nearest appropriate licensed service provider within the first 8
380 hours after detention that the person has been detained. It is
381 the duty of the detention facility to arrange, as necessary, for
382 transportation of the person to an appropriate licensed service
383 provider with an available bed. Persons taken into protective
384 custody must be assessed by the attending physician within the

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385 72-hour period and without unnecessary delay, to determine the
386 need for further services.

387 (2) The law enforcement officer must notify the nearest
388 relative of a minor in protective custody and ~~must be notified~~
389 ~~by the law enforcement officer, as~~ must notify the nearest
390 relative or other known emergency contact of an adult, unless
391 the adult requests that there be no notification. The law
392 enforcement officer must document such notification, and any
393 attempts at notification, in the written report detailing the
394 circumstances under which the person was taken into custody as
395 required under paragraph (1) (a).

396 Section 9. Paragraph (b) of subsection (1) of section
397 409.972, Florida Statutes, is amended to read:

398 409.972 Mandatory and voluntary enrollment.—

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

403 (b) Medicaid recipients residing in residential commitment
404 facilities operated through the Department of Juvenile Justice
405 or a treatment facility as defined in s. 394.455(49) ~~s.~~
406 ~~394.455(48)~~.

407 Section 10. Subsection (7) of section 744.2007, Florida
408 Statutes, is amended to read:

409 744.2007 Powers and duties.—

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

413 Section 11. This act shall take effect July 1, 2022.
414
415

416 -----

417 **T I T L E A M E N D M E N T**

418 Remove everything before the enacting clause and insert:
419 An act relating to mental health and substance abuse; amending
420 s. 394.459, F.S.; revising the conditions under which a
421 patient's communication with persons outside of a receiving
422 facility may be restricted; revising the conditions under which
423 a patient's sealed and unopened incoming or outgoing
424 correspondence may be restricted; revising the conditions under
425 which a patient's visitation with persons outside of a receiving
426 facility may be restricted; revising the frequency with which
427 the restriction on a patient's right to receive visitors must be
428 reviewed; amending s. 394.4599, F.S.; requiring a receiving
429 facility to notify specified emergency contacts of individuals
430 who are being involuntarily held for examination; amending s.
431 394.4615, F.S.; requiring receiving facilities to document that
432 an option to authorize the release of specified information has
433 been provided, within a specified timeframe, to individuals
434 admitted on a voluntary basis; amending s. 394.463, F.S.;

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435 requiring that reports issued by law enforcement officers when
436 delivering a person to a receiving facility contain certain
437 information related to emergency contacts; limiting the use of
438 certain information provided; maintaining the confidential and
439 exempt status of certain information provided to a receiving
440 facility; requiring the Department of Children and Families to
441 receive and maintain reports relating to the transportation of
442 patients; requiring a facility administrator to file a petition
443 for involuntary placement by a specified time; authorizing a
444 receiving facility to postpone the release of a patient if
445 certain requirements are met; prohibiting certain activities
446 relating to examination and treatment; providing a criminal
447 penalty; amending s. 394.468, F.S.; requiring that discharge and
448 planning procedures include and document the consideration of
449 specified factors and actions; amending s. 394.9086; modifying
450 meeting requirements of the Commission on Mental Health and
451 Substance Abuse; authorizing reimbursement for per diem and
452 travel expenses; authorizing the commission to access certain
453 records; modifying the due date for the Commission's interim
454 report; amending s. 397.601, F.S.; requiring service providers
455 to document that an option to authorize the release of specified
456 information has been provided, within a specified timeframe, to
457 individuals admitted on a voluntary basis; amending s. 397.6772,
458 F.S.; requiring law enforcement officers to include certain
459 information relating to emergency contacts in reports relating

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460 | to the delivery of a person to a hospital or licensed
461 | detoxification or addictions receiving facility; limiting the
462 | use of certain information provided; maintaining the
463 | confidential and exempt status of certain information provided
464 | to a hospital or licensed detoxification or addictions receiving
465 | facility; amending ss. 409.972 and 744.2007, F.S.; conforming
466 | cross-references; providing an effective date.
467 |