

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1120

INTRODUCER: Committee on Children, Families, and Elder Affairs and Senator Rodriguez

SUBJECT: Child Welfare

DATE: January 26, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Berger	Cox	CF	Fav/CS
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantive Changes

I. Summary:

CS/SB 1120 authorizes the Department of Children and Families (DCF) to place children who meet the definition of a “child or adolescent who has an emotional disturbance” or a “child or adolescent who has a serious emotional disturbance or mental illness” in therapeutic group homes for mental health treatment without prior court approval under certain circumstances.

The DCF has established a process for credentialing an existing licensed therapeutic group home as a qualified residential treatment program (QRTP) in accordance with rule and in compliance with federal requirements for QRTPs. The bill ensures that the process the DCF has established for credentialing an existing licensed therapeutic group home as a qualified residential treatment program (QRTP) will result in placements that only occur in accordance with rule and in compliance with federal requirements for QRTPs.

The bill makes a number of changes to definitions that apply to s. 39.407, F.S., relating, in part, to medical, psychiatric, and psychological examination and treatment of child, to:

- Add the term “therapeutic group home” and define such term to mean a 24-hour residential program providing community-based mental health treatment and mental health support services to children who meet the criteria in s. 394.492(5) or (6), F.S., in a nonsecure, homelike setting.
- Amend the definition of a “residential treatment center” or “residential treatment program” to include a therapeutic group home as defined above.

- Clarify the definition of “suitable for residential treatment” or “suitability” to apply when the criteria is met for a child to be placed if the child is expected to benefit from emotional, or behavioral health treatment, in addition to mental health treatment.

The bill maintains current requirements for qualified evaluators that will be conducting suitability assessments for placement in a residential treatment center or hospital. However, the bill amends the qualifications of qualified evaluators for placement in a TGH, including those credentialed as a QRTP, to require an evaluator to:

- Be a psychiatrist licensed under ch. 458, F.S., or ch. 459, F.S.; a psychiatrist licensed under ch. 459, F.S.; or a mental health counselor licensed under ch. 491, F.S.;
- Have at least two experience in the diagnosis and treatment of serious emotional or behavioral disturbance in children and adolescents; and
- Not have any actual or perceived conflict of interest with any residential treatment center or program.

The bill also statutorily updates the qualified evaluators’ process to reflect current practices providing that the DCF, rather than the Agency for Health Care Administration (ACHA), must appoint qualified evaluators to conduct suitability assessments and modifies the time frame for providing a copy of the suitability assessment to a child’s guardian ad litem and the court.

Lastly, the bill authorizes the DCF to adopt rules to administer the provisions of the bill.

The bill will likely have an insignificant fiscal impact on state and local government. See Section V. Fiscal Impact Statement.

This act shall take effect upon becoming a law.

II. Present Situation:

Family First Prevention Services Act

The federal Family First Prevention Services Act (FFPSA), included in the 2018 Bipartisan Budget Act,¹ focuses on evidence-based services to prevent children from entering foster care; limits reimbursement for congregate (group home) care; and makes changes affecting adoption subsidies, reunification, and extended foster care supports. The FFPSA reformed the federal child welfare funding streams. Unlike the previous Title IV-E provisions which primarily funded out-of-home care for families with very low incomes, the FFPSA gives states the ability to earn federal Title IV-E matching funds in support of certain prevention services provided on a time-limited basis that avoid an out-of-home placement for children without regard to family income. In providing for children and their families meeting eligibility requirements, the FFPSA provides for the reimbursement of specific federally approved, evidence-based services that address mental health, substance abuse, family counseling, and parent skills training. The FFPSA also limits federal funding for group homes placements.²

¹ H.R. 1862 of 2018. Pub.L. 115-123

² The DCF, *The Florida Center for Child Welfare FFPSA Updates*, available at [Florida's Center for Child Welfare | FFPSA Updates \(usf.edu\)](https://www.floridacenter.org/FFPSA-Updates); see also the National Conference of State Legislatures (NCSL), *Family First Prevention Services Act*,

The Title IV- E Prevention Services Clearinghouse was established by the U.S. Department of Health and Human Services Administration for Children and Families (ACF) to conduct an objective and transparent review of research on programs and services intended to provide enhanced support to children and families and prevent foster care placements. The Prevention Services Clearinghouse, developed in accordance with the FFPSA and codified in Title IV-E of the Social Security Act, rates programs and services as well-supported, supported, promising, or does not currently meet criteria.³

Congress made the FFPSA effective October 1, 2018, but gave states the opportunity to delay implementation of select provisions of the law.⁴ Florida received approval to delay the implementation of the FFPSA until October 1, 2021.⁵

Mental Health Residential Treatment Programs

Residential Treatment Centers for Children and Adolescents (RTC) are 24 hour residential programs, including therapeutic group homes, licensed by the ACHA.⁶ These centers were designed to provide mental health treatment and services to children under the age of 18 who have been diagnosed as having mental, emotional, or behavioral disorders.⁷ All providers rendering Florida Medicaid therapeutic group care services to recipients must be in compliance with the provisions of the Florida Medicaid Therapeutic Group Care Services Coverage Policy, July 2017.⁸

Section 394.4781, F.S., authorizes the DCF to pay a portion of the costs associated with residential care for children who have been diagnosed with severe emotional disturbance, who are recommended to need a residential level of mental health treatment by a Florida licensed psychologist or psychiatrist, and who are not eligible for public or private insurance.⁹ Due to limited funds, the DCF must review applications monthly to approve or deny applications for treatment according to criteria:¹⁰

- The severity level of the child's mental health;
- The financial means of the child's family;
- The availability of the needed residential care; and

available at <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> (all sites last visited January 18, 2022).

³ See the U.S. Department of Health and Human Services, Office of Planning, Research, and Evaluation, *Title IV-E Prevention Services Clearinghouse*, 2018 – 2023, available at <https://www.acf.hhs.gov/opre/project/title-iv-e-prevention-services-clearinghouse-2018-2023> (last visited January 18, 2022).

⁴ The NCSL, *Family First Prevention Services Act*, available at <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> (last visited January 18, 2022).

⁵ The DCF, *Agency Analysis for SB 900 (2021)*, p. 4, (on file with Senate Committee on Children, Families, and Elder Affairs).

⁶ See the ACHA, *Residential Treatment Centers for Children and Adolescents*, available at https://ahca.myflorida.com/mchq/health_facility_regulation/hospital_outpatient/rtc.shtml (last visited January 20, 2022)

⁷ *Id.*

⁸ Rule 59G-4.295, F.A.C.

⁹ Section 394.4781, F.S.

¹⁰ See the DCF, *Children's Mental Health Residential Treatment*, available at <https://www.myflfamilies.com/service-programs/samh/childrens-mental-health/residential-treatment.shtml> (last visited January 18, 2022).

- The funds available to the DCF.¹¹

Mental health treatment is aimed to assist children to live successfully in their community and with their families. Placement into a residential mental health treatment center is made only after careful consideration and assessments. Before a placement, all other avenues of less restrictive treatment are weighed and must be deemed non appropriate.¹² Only if the needed services cannot be provided in a less restrictive environment, a residential mental health treatment program is then considered for the child.¹³

Qualified Residential Treatment Programs

Qualified Residential Treatment Programs (QRTP) are a new placement setting created by the FFPSA which were implemented in Florida in May 2021.¹⁴ Placement of a child in a QRTP is for the specific purpose of addressing the child’s emotional and behavioral health needs through observation, diagnosis, and treatment in a treatment setting.¹⁵

Florida currently has five licensed QRTPs with a total capacity of 50 beds. A QRTP must obtain a residential treatment center license through the AHCA and a credential from the DCF, which aligns the QRTP with all federal requirements.¹⁶ Each facility that aims to be a QRTP must meet the licensing requirements set forth in s. 394.875, F.S., and the credentialing standards set forth in Rule 65C-46.021, F.A.C., in addition to, in part:

- Completing an application for credential as a QRTP;
- Providing a copy of their active Florida license issued by the ACHA;
- Completing a background screening as specified in rule;
- Working in conjunction with a qualified evaluator to conduct all assessments;
- Completing training in trauma-informed care, including to submit to the regional licensing authority a staff roster outlining the dates of completion for the trauma-informed care training;
- Employing registered or licensed nursing staff and other licensed clinical staff that, in part, are onsite in accordance with the QRTP trauma-informed treatment model and who are available 24 hours a day, 7 days a week to respond;
- Becoming accredited by one of the approved organizations;
- Providing high level supportive services for youth;
- Developing treatment plans, discharge, and aftercare plans; and
- Informing the DCF regional licensing authority within one business day of any disciplinary actions executed by the AHCA.¹⁷

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ The DCF, *Agency Analysis for SB 1120*, January 21, 2022, p. 2-3 (on file with Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited “The DCF SB 1120 Analysis”). Florida has defined QRTPs through rulemaking authority under Rule 65C-28.021, F.A.C.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Rule 65C-46.021, F.A.C.

The DCF states that reimbursement for the service delivery is available for children placed in the QRTP through the bundled specialized therapeutic group home fee as a result of the state agency collaborative approach to license and credential a QRTP.¹⁸

The FFPSA requires an assessment using an evidence-based tool within 30 days of placement. The DCF states it has identified the Child and Adolescent Needs and Strengths (CANS) – Trauma version as the evidence-based tool which has been incorporated into the suitability assessment.¹⁹ Although Florida law does not contemplate QRTP assessments, any child in need of placement in a QRTP is required to submit to a suitability assessment to align with s. 39.407, F.S.

Specific Children In Need of Placement in a RTC or QRTP

RTCs and QRTPS serve children and adolescents with emotional disturbance or serious emotional disturbance or mental illness. Section 394.492(5), F.S., defines a “child or adolescent who has an emotional disturbance” to mean a person under 18 years of age who is diagnosed with a mental, emotional, or behavioral disorder of sufficient duration to meet one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association, but who does not exhibit behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community.²⁰

Additionally, s. 394.492(6), F.S., defines a “child or adolescent who has a serious emotional disturbance or mental illness” to mean a person under 18 years of age who:

- Is diagnosed as having a mental, emotional, or behavioral disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; and
- Exhibits behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community, which behaviors are not considered to be a temporary response to a stressful situation.

Both of these terms do not include a child or adolescent who meets the criteria for involuntary placement under s. 394.467(1), F.S., also known as the Baker Act.²¹

Licensure of Mental Health Residential Treatment Facilities

Under Rule 65E-4.016 of the Florida Administrative Code (FAC), to be licensed as a mental health residential treatment facility an applicant must provide a long term, homelike residential environment that provides care, support, assistance and limited supervision in daily living to adults diagnosed with a serious and persistent major mental illness who do not have another primary residence.²² Any facility licensed as a residential treatment facility must sustain a 60 day

¹⁸ The DCF SB 1120 Analysis, p. 3.

¹⁹ *Id.*

²⁰ The definition further provides that that the emotional disturbance must not be considered to be a temporary response to a stressful situation.

²¹ The Baker Act is contained in ch. 394, F.S.

²² Rule 65E-4.016, F.A.C.

average or greater length of stay of residents, except as specifically provided for in s. 394.875(11), F.S.²³

Qualified Evaluators and Suitability Assessments for Placement

Section 39.407(6), F.S., requires the DCF to conduct an examination and suitability assessment if it is believed that a child needs residential treatment.²⁴ The DCF must conduct a suitability assessment prior to placing children in a Psychiatric Residential Treatment Facility (PRTF/SIPP) and Specialized Therapeutic Group Homes (STGH).²⁵

The suitability assessment must be conducted by a qualified evaluator who meets the following requirements:

- Is a psychiatrist or a psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents;
- Has at least 2 years' experience working with children or adolescents involved in the child welfare system of care;
- Has no actual or perceived conflict of interest with an in-patient or STGH facility; and
- Has completed training pertaining to the population of children in the child welfare system.²⁶

The Qualified Evaluator Network (QEN) was established by Magellan in July, 2001 to provide assessment services for children in the care and custody of the DCF. The DCF contracts with the QEN who is responsible for recruiting qualified evaluators to conduct suitability assessments. Each assessment must provide an independent, professional assessment of suitability for residential treatment for mental health.²⁷ QENs are intended to prevent premature or inappropriate referrals to residential psychiatric placements and utilizing the QEN results in a return to community-based services as soon as clinically possible.²⁸

Once a qualified evaluator receives a referral, the contract requires that a recommendation be rendered within 11 business days from receipt of the referral.²⁹ The DCF states that at this time there are only 18 qualified evaluators statewide who are completing assessments on an average of six business days. Through the implementation of teleconference, the QEN was able to reduce the time it takes to complete an assessment with final submission by the QEN to the Community-Based Care lead agency.³⁰

Initially, the suitability assessment was conducted by a qualified evaluator appointed through a contract with Magellan procured by the AHCA. During this time, the DCF was the primary

²³ *Id.*

²⁴ Section 39.407(6), F.S.

²⁵ See the DCF, *Suitability for Residential Placement Guidelines*, available at <https://www.myflfamilies.com/service-programs/community-based-care/docs/SuitabilityAssessmentGuidance.pdf> (last visited January 20, 2022).

²⁶ Section 39.407(6), F.S.

²⁷ See Magellan Healthcare, *Qualified Evaluator Network*, available at <https://www.magellancompletecareoffl.com/documents/2019/09/florida-qen-overview.pdf/#:~:text=All%20Qualified%20Evaluators%20are%20required,in%2Dpatient%20or%20STGH%20facility> (last visited January 21, 2022).

²⁸ *Id.*

²⁹ The DCF SB 1120 Analysis, p. 2-3.

³⁰ *Id.*, p. 3.

executor the contract, but the AHCA held the rule making authority, set the fee schedule for the evaluators, and maintained the list of providers. However, in 2016, the contract under Magellan was transferred entirely to the DCF to determine the qualified evaluator requirements.³¹ This contract transfer allotted for a more cohesive execution of services. The DCF currently continues to contract with this third-party vendor for the management of the QEN.³²

Under s. 39.407(6)(d), F.S., the timeframe to provide the assessments to the guardian ad litem and the court is “immediately” upon placement.³³

Rulemaking Authority

The DCF does not currently have broad rulemaking authority, as the rulemaking authority for suitability assessments is currently split between the DCF and AHCA, specifically requiring the:

- DCF to adopt rules for implementing timeframes for the completion of suitability assessments by qualified evaluators and a procedure that includes timeframes for completing the 60-day independent review by the qualified evaluators of the child’s progress toward achieving the goals and objectives of the treatment plan.
- ACHA to adopt rules for the registration of qualified evaluators, the procedure for selecting the evaluators to conduct the reviews required under s. 39.407, F.S., and a reasonable, cost-efficient fee schedule for qualified evaluators.³⁴

Florida Medicaid Program

The Medicaid program is a joint federal-state program that finances health coverage for individuals, including eligible low-income adults, children, pregnant women, elderly adults, and persons with disabilities.³⁵ The Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS) is responsible for administering the federal Medicaid program. Florida Medicaid is the health care safety net for low-income Floridians. Florida’s program is administered by the AHCA and financed through state and federal funds.³⁶

A Medicaid state plan is an agreement between a state and the federal government describing how the state administers its Medicaid programs. The state plan establishes groups of individuals covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements.

In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups

³¹ See Magellan Complete Care, *Am I Eligible*, available at <https://www.magellancompletecareoffl.com/enrollment-and-renewal/are-you-eligible/>; see also Magellan Complete Care; *Qualified Evaluator Network (QEN)*, p. 7, available at [PowerPoint Presentation \(magellanoffloridacom\)](https://www.magellanoffloridacom.com) (all sites last visited January 20, 2022).

³² See Magellan of Florida, *QEN Training Manual*, available at <https://www.magellanoffloridacom/documents/2019/09/2019-florida-qen-training-manual.pdf/> (last visited January 20, 2022).

³³ Section 39.407(6)(d), F.S.

³⁴ Section 39.407(6)(i), F.S.

³⁵ Medicaid.gov, *Medicaid*, available at <https://www.medicaid.gov/medicaid/index.html> (last visited January 23, 2022).

³⁶ Section 20.42, F.S.

(optional eligibility groups). States set individual eligibility criteria within federal minimum standards. The AHCA may seek an amendment to the state plan as necessary to comply with federal or state laws or to implement program changes. States send state plan amendments to the federal CMS for review and approval.³⁷

Florida Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service (FFS) or managed care. Under FFS, health care providers are paid by the state Medicaid program for each service provided to a Medicaid enrollee. Under managed care, the AHCA contracts with private managed care plans for the coordination and payment of services for Medicaid enrollees. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan.

In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program. The SMMC program has two components, the Managed Medical Assistance (MMA) program and the Long-term Care program. Florida's SMMC offers a health care package covering both acute and long-term care. The SMMC benefits are authorized by federal authority and are specifically required in ss. 409.973 and 409.98, F.S.

The AHCA contracts with managed care plans on a regional basis to provide services to eligible recipients. The MMA program, which covers most medical and acute care services for managed care plan enrollees, was fully implemented in August 2014 and was re-procured for a period beginning December 2018 and ending in 2023.

III. Effect of the Bill

The bill amends s. 39.407, F.S, authorizing the DCF to place a child or adolescent who meet the definition of a “child or adolescent who has an emotional disturbance” or a “child or adolescent who has a serious emotional disturbance or mental illness” in therapeutic group homes for mental health treatment without prior court approval under certain circumstances.

The bill makes a number of changes to definitions that apply to s. 39.407, F.S., relating, in part, to medical, psychiatric, and psychological examination and treatment of child, to:

- Add the term “therapeutic group home”, which is not currently defined in ch. 39, F.S., and define such term to mean a 24-hour residential program providing community-based mental health treatment and mental health support services to children who meet the criteria in s. 394.492(5) or (6), F.S., in a nonsecure, homelike setting;
- Amend the definition of a “residential treatment center” or “residential treatment program” to include a therapeutic group home as defined above; and
- Expanding the definition of “suitable for residential treatment” or “suitability” to include if the child is expected to benefit from emotional, or behavioral health treatment, in addition to mental health treatment.

³⁷ Medicaid.gov, *Medicaid State Plan Amendments*, available at <https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html> (last visited January 23, 2022).

Through the above definitions and the application of such terms throughout s. 39.407, F.S., the bill ensures that the process the DCF has established for credentialing an existing licensed therapeutic group home as a QRTP will result in placements that only occur in accordance with rule and in compliance with federal requirements for QRTPs.

The bill also statutorily updates the qualified evaluators' process to reflect current practices providing that the DCF, rather than the ACHA, must appoint qualified evaluators to conduct suitability assessments.

The bill maintains current requirements for qualified evaluators that will be conducting suitability assessments for placement in a residential treatment center or hospital. However, the bill amends the qualifications of qualified evaluators for placement in a TGH, including those credentialed as a QRTP, to require an evaluator to:

- Be a psychiatrist licensed under ch. 458, F.S., or ch. 459, F.S.; a psychiatrist licensed under ch. 459, F.S.; or a mental health counselor licensed under ch. 491, F.S.;
- Have at least two years of experience in the diagnosis and treatment of serious emotional or behavioral disturbance in children and adolescents; and
- Not have any actual or perceived conflict of interest with any residential treatment center or program.

These changes to the qualifications will expand the pool of qualified evaluators for conducting suitability assessments for STGH and QRTP placements to more than the 18 currently used for PRTE/SIPP suitability assessments.³⁸

The bill also amends s. 39.407, F.S., requiring the DCF to provide the guardian ad litem and the court with a copy of the assessment by the qualified evaluator within five days after the DCF's receipt of the assessment, rather than immediately upon placement as required in current law.

The bill authorizes the DCF to adopt rules to administer the provisions of s. 39.407, F.S., rather than just the time frames for completion of suitability as is provided for in current law.

This act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

³⁸ The DCF states that the third-party vendor contracted for the management of the QEN estimates that this change in requirements will increase the pool of potentially qualified evaluators to approximately 2,000. The DCF SB 1120 Analysis, p. 4.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will likely have an indeterminate impact on the DCF due to the additional licensing and evaluator requirements. The bill also maximizes Medicaid claiming as well as capacity of federally Title IV-E funded QRTP placements.³⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 39.407 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on January 25, 2022.

The committee substitute:

³⁹ The DCF SB 1120 Analysis, p. 6.

- Modifies the definition of the term “therapeutic group home” (TGHs) to remove the cross-reference to s. 419.001, F.S., and to remove the limitation of 16 beds for the TGHs; and
- Expands persons who can be qualified evaluators to include psychiatrists licensed under ch. 459, F.S., in addition to those licensed under ch. 458, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
