

1 A bill to be entitled

2 An act relating to involuntary examinations under the
3 Baker Act; reordering and amending s. 394.455, F.S.;
4 providing definitions; updating references to the
5 Department of Children and Families; amending s.
6 394.463, F.S.; authorizing physician assistants and
7 advanced registered nurse practitioners to initiate
8 involuntary examinations under the Baker Act of
9 persons believed to have mental illness; providing
10 education and continuing education requirements for
11 such physician assistants and advanced registered
12 nurse practitioners; amending ss. 39.407, 394.495,
13 394.496, 394.9085, 409.972, and 744.704, F.S.;
14 conforming cross-references; providing an effective
15 date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Paragraph (a) of subsection (3) of section
20 39.407, Florida Statutes, is amended to read:

21 39.407 Medical, psychiatric, and psychological examination
22 and treatment of child; physical, mental, or substance abuse
23 examination of person with or requesting child custody.—

24 (3)(a)1. Except as otherwise provided in subparagraph
25 (b)1. or paragraph (e), before the department provides
26 psychotropic medications to a child in its custody, the

27 | prescribing physician shall attempt to obtain express and
28 | informed consent, as defined in s. 394.455 ~~394.455(9)~~ and as
29 | described in s. 394.459(3)(a), from the child's parent or legal
30 | guardian. The department must take steps necessary to facilitate
31 | the inclusion of the parent in the child's consultation with the
32 | physician. However, if the parental rights of the parent have
33 | been terminated, the parent's location or identity is unknown or
34 | cannot reasonably be ascertained, or the parent declines to give
35 | express and informed consent, the department may, after
36 | consultation with the prescribing physician, seek court
37 | authorization to provide the psychotropic medications to the
38 | child. Unless parental rights have been terminated and if it is
39 | possible to do so, the department shall continue to involve the
40 | parent in the decisionmaking process regarding the provision of
41 | psychotropic medications. If, at any time, a parent whose
42 | parental rights have not been terminated provides express and
43 | informed consent to the provision of a psychotropic medication,
44 | the requirements of this section that the department seek court
45 | authorization do not apply to that medication until such time as
46 | the parent no longer consents.

47 | 2. Any time the department seeks a medical evaluation to
48 | determine the need to initiate or continue a psychotropic
49 | medication for a child, the department must provide to the
50 | evaluating physician all pertinent medical information known to
51 | the department concerning that child.

52 | Section 2. Section 394.455, Florida Statutes, is reordered

53 and amended to read:

54 394.455 Definitions.—As used in this part, ~~unless the~~
 55 ~~context clearly requires otherwise,~~ the term:

56 (1) "Administrator" means the chief administrative officer
 57 of a receiving or treatment facility or his or her designee.

58 (2) "Advanced registered nurse practitioner" means a
 59 practitioner licensed under part I of chapter 464 who is
 60 authorized to perform the functions listed in s. 464.012(4)(c).

61 (3)~~(2)~~ "Clinical psychologist" means a psychologist as
 62 defined in s. 490.003(7) with 3 years of postdoctoral experience
 63 in the practice of clinical psychology, inclusive of the
 64 experience required for licensure, or a psychologist employed by
 65 a facility operated by the United States Department of Veterans
 66 Affairs that qualifies as a receiving or treatment facility
 67 under this part.

68 (4)~~(3)~~ "Clinical record" means all parts of the record
 69 required to be maintained and includes all medical records,
 70 progress notes, charts, and admission and discharge data, and
 71 all other information recorded by a facility which pertains to
 72 the patient's hospitalization or treatment.

73 (5)~~(4)~~ "Clinical social worker" means a person licensed as
 74 a clinical social worker under chapter 491.

75 (6)~~(5)~~ "Community facility" means any community service
 76 provider contracting with the department to furnish substance
 77 abuse or mental health services under part IV of this chapter.

78 (7)~~(6)~~ "Community mental health center or clinic" means a

79 | publicly funded, not-for-profit center which contracts with the
 80 | department for the provision of inpatient, outpatient, day
 81 | treatment, or emergency services.

82 | (8)~~(7)~~ "Court," unless otherwise specified, means the
 83 | circuit court.

84 | (9)~~(8)~~ "Department" means the Department of Children and
 85 | Families ~~Family Services~~.

86 | (10)~~(38)~~ "Electronic means" means a form of
 87 | telecommunication that requires all parties to maintain visual
 88 | as well as audio communication.

89 | (11)~~(9)~~ "Express and informed consent" means consent
 90 | voluntarily given in writing, by a competent person, after
 91 | sufficient explanation and disclosure of the subject matter
 92 | involved to enable the person to make a knowing and willful
 93 | decision without any element of force, fraud, deceit, duress, or
 94 | other form of constraint or coercion.

95 | (12)~~(10)~~ "Facility" means any hospital, community
 96 | facility, public or private facility, or receiving or treatment
 97 | facility providing for the evaluation, diagnosis, care,
 98 | treatment, training, or hospitalization of persons who appear to
 99 | have a mental illness or have been diagnosed as having a mental
 100 | illness. The term "Facility" does not include any program or
 101 | entity licensed pursuant to chapter 400 or chapter 429.

102 | (13)~~(11)~~ "Guardian" means the natural guardian of a minor,
 103 | or a person appointed by a court to act on behalf of a ward's
 104 | person if the ward is a minor or has been adjudicated

105 incapacitated.

106 (14)~~(12)~~ "Guardian advocate" means a person appointed by a
107 court to make decisions regarding mental health treatment on
108 behalf of a patient who has been found incompetent to consent to
109 treatment pursuant to this part. The guardian advocate may be
110 granted specific additional powers by written order of the
111 court, as provided in this part.

112 (15)~~(13)~~ "Hospital" means a facility as defined in s.
113 395.002 and licensed under chapter 395 and part II of chapter
114 408.

115 (16)~~(14)~~ "Incapacitated" means that a person has been
116 adjudicated incapacitated pursuant to part V of chapter 744 and
117 a guardian of the person has been appointed.

118 (17)~~(15)~~ "Incompetent to consent to treatment" means that
119 a person's judgment is so affected by his or her mental illness
120 that the person lacks the capacity to make a well-reasoned,
121 willful, and knowing decision concerning his or her medical or
122 mental health treatment.

123 (18)~~(34)~~ "Involuntary examination" means an examination
124 performed under s. 394.463 to determine if an individual
125 qualifies for involuntary inpatient treatment under s.
126 394.467(1) or involuntary outpatient treatment under s.
127 394.4655(1).

128 (19)~~(35)~~ "Involuntary placement" means either involuntary
129 outpatient treatment pursuant to s. 394.4655 or involuntary
130 inpatient treatment pursuant to s. 394.467.

131 (20)~~(16)~~ "Law enforcement officer" means a law enforcement
132 officer as defined in s. 943.10.

133 (21)~~(36)~~ "Marriage and family therapist" means a person
134 licensed as a marriage and family therapist under chapter 491.

135 (22)~~(37)~~ "Mental health counselor" means a person licensed
136 as a mental health counselor under chapter 491.

137 (23)~~(17)~~ "Mental health overlay program" means a mobile
138 service which provides an independent examination for voluntary
139 admissions and a range of supplemental onsite services to
140 persons with a mental illness in a residential setting such as a
141 nursing home, assisted living facility, adult family-care home,
142 or nonresidential setting such as an adult day care center.
143 Independent examinations provided pursuant to this part through
144 a mental health overlay program must only be provided under
145 contract with the department for this service or be attached to
146 a public receiving facility that is also a community mental
147 health center.

148 (24)~~(18)~~ "Mental illness" means an impairment of the
149 mental or emotional processes that exercise conscious control of
150 one's actions or of the ability to perceive or understand
151 reality, which impairment substantially interferes with the
152 person's ability to meet the ordinary demands of living. For the
153 purposes of this part, the term does not include a developmental
154 disability as defined in chapter 393, intoxication, or
155 conditions manifested only by antisocial behavior or substance
156 abuse impairment.

157 ~~(25)-(19)~~ "Mobile crisis response service" means a
158 nonresidential crisis service attached to a public receiving
159 facility and available 24 hours a day, 7 days a week, through
160 which immediate intensive assessments and interventions,
161 including screening for admission into a receiving facility,
162 take place for the purpose of identifying appropriate treatment
163 services.

164 ~~(26)-(20)~~ "Patient" means any person who is held or
165 accepted for mental health treatment.

166 ~~(27)-(21)~~ "Physician" means a medical practitioner licensed
167 under chapter 458 or chapter 459 who has experience in the
168 diagnosis and treatment of mental and nervous disorders or a
169 physician employed by a facility operated by the United States
170 Department of Veterans Affairs which qualifies as a receiving or
171 treatment facility under this part.

172 (28) "Physician assistant" means a physician assistant
173 licensed under chapter 458 or chapter 459 who has experience
174 regarding the diagnosis and treatment of mental and nervous
175 disorders and such tasks as are within the supervising
176 physician's scope of practice.

177 ~~(29)-(22)~~ "Private facility" means any hospital or facility
178 operated by a for-profit or not-for-profit corporation or
179 association that provides mental health services and is not a
180 public facility.

181 ~~(30)-(23)~~ "Psychiatric nurse" means a registered nurse
182 licensed under part I of chapter 464 who has a master's degree

183 or a doctorate in psychiatric nursing and 2 years of post-
184 master's clinical experience under the supervision of a
185 physician.

186 (31)~~(24)~~ "Psychiatrist" means a medical practitioner
187 licensed under chapter 458 or chapter 459 who has primarily
188 diagnosed and treated mental and nervous disorders for a period
189 of not less than 3 years, inclusive of psychiatric residency.

190 (32)~~(25)~~ "Public facility" means any facility that has
191 contracted with the department to provide mental health services
192 to all persons, regardless of their ability to pay, and is
193 receiving state funds for such purpose.

194 (33)~~(26)~~ "Receiving facility" means any public or private
195 facility designated by the department to receive and hold
196 involuntary patients under emergency conditions or for
197 psychiatric evaluation and to provide short-term treatment. The
198 term does not include a county jail.

199 (34)~~(27)~~ "Representative" means a person selected to
200 receive notice of proceedings during the time a patient is held
201 in or admitted to a receiving or treatment facility.

202 (35)~~(28)~~ (a) "Restraint" means a physical device, method,
203 or drug used to control behavior. A physical restraint is any
204 manual method or physical or mechanical device, material, or
205 equipment attached or adjacent to the individual's body so that
206 he or she cannot easily remove the restraint and which restricts
207 freedom of movement or normal access to one's body.

208 (b) A drug used as a restraint is a medication used to

209 control the person's behavior or to restrict his or her freedom
 210 of movement and is not part of the standard treatment regimen of
 211 a person with a diagnosed mental illness who is a client of the
 212 department. Physically holding a person during a procedure to
 213 forcibly administer psychotropic medication is a physical
 214 restraint.

215 (c) Restraint does not include physical devices, such as
 216 orthopedically prescribed appliances, surgical dressings and
 217 bandages, supportive body bands, or other physical holding when
 218 necessary for routine physical examinations and tests; or for
 219 purposes of orthopedic, surgical, or other similar medical
 220 treatment; when used to provide support for the achievement of
 221 functional body position or proper balance; or when used to
 222 protect a person from falling out of bed.

223 ~~(36)-(29)~~ "Seclusion" means the physical segregation of a
 224 person in any fashion or involuntary isolation of a person in a
 225 room or area from which the person is prevented from leaving.
 226 The prevention may be by physical barrier or by a staff member
 227 who is acting in a manner, or who is physically situated, so as
 228 to prevent the person from leaving the room or area. For
 229 purposes of this chapter, the term does not mean isolation due
 230 to a person's medical condition or symptoms.

231 ~~(37)-(30)~~ "Secretary" means the Secretary of Children and
 232 Families ~~Family Services~~.

233 ~~(38)-(33)~~ "Service provider" means any public or private
 234 receiving facility, an entity under contract with the Department

235 of Children and Families ~~Family Services~~ to provide mental
236 health services, a clinical psychologist, a clinical social
237 worker, a marriage and family therapist, a mental health
238 counselor, a physician, a psychiatric nurse as defined in
239 subsection (30) ~~(23)~~, or a community mental health center or
240 clinic as defined in this part.

241 (39) ~~(31)~~ "Transfer evaluation" means the process, as
242 approved by the appropriate district office of the department,
243 whereby a person who is being considered for placement in a
244 state treatment facility is first evaluated for appropriateness
245 of admission to the facility by a community-based public
246 receiving facility or by a community mental health center or
247 clinic if the public receiving facility is not a community
248 mental health center or clinic.

249 (40) ~~(32)~~ "Treatment facility" means any state-owned,
250 state-operated, or state-supported hospital, center, or clinic
251 designated by the department for extended treatment and
252 hospitalization, beyond that provided for by a receiving
253 facility, of persons who have a mental illness, including
254 facilities of the United States Government, and any private
255 facility designated by the department when rendering such
256 services to a person pursuant to the provisions of this part.
257 Patients treated in facilities of the United States Government
258 shall be solely those whose care is the responsibility of the
259 United States Department of Veterans Affairs.

260 Section 3. Paragraph (a) of subsection (2) of section
261 394.463, Florida Statutes, is amended to read:

262 394.463 Involuntary examination.—

263 (2) INVOLUNTARY EXAMINATION.—

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

266 1. A court may enter an ex parte order stating that a
267 person appears to meet the criteria for involuntary examination,
268 giving the findings on which that conclusion is based. The ex
269 parte order for involuntary examination must be based on sworn
270 testimony, written or oral. If other less restrictive means are
271 not available, such as voluntary appearance for outpatient
272 evaluation, a law enforcement officer, or other designated agent
273 of the court, shall take the person into custody and deliver him
274 or her to the nearest receiving facility for involuntary
275 examination. The order of the court shall be made a part of the
276 patient's clinical record. No fee shall be charged for the
277 filing of an order under this subsection. Any receiving facility
278 accepting the patient based on this order must send a copy of
279 the order to the Agency for Health Care Administration on the
280 next working day. The order shall be valid only until executed
281 or, if not executed, for the period specified in the order
282 itself. If no time limit is specified in the order, the order
283 shall be valid for 7 days after the date that the order was
284 signed.

285 2. A law enforcement officer shall take a person who

286 appears to meet the criteria for involuntary examination into
287 custody and deliver the person or have him or her delivered to
288 the nearest receiving facility for examination. The officer
289 shall execute a written report detailing the circumstances under
290 which the person was taken into custody, and the report shall be
291 made a part of the patient's clinical record. Any receiving
292 facility accepting the patient based on this report must send a
293 copy of the report to the Agency for Health Care Administration
294 on the next working day.

295 3.a. A physician, physician assistant, clinical
296 psychologist, psychiatric nurse, mental health counselor,
297 marriage and family therapist, ~~or~~ clinical social worker, or
298 advanced registered nurse practitioner may execute a certificate
299 stating that he or she has examined a person within the
300 preceding 48 hours and finds that the person appears to meet the
301 criteria for involuntary examination and stating the
302 observations upon which that conclusion is based. If other less
303 restrictive means are not available, such as voluntary
304 appearance for outpatient evaluation, a law enforcement officer
305 shall take the person named in the certificate into custody and
306 deliver him or her to the nearest receiving facility for
307 involuntary examination. The law enforcement officer shall
308 execute a written report detailing the circumstances under which
309 the person was taken into custody. The report and certificate
310 shall be made a part of the patient's clinical record. Any
311 receiving facility accepting the patient based on this

312 certificate must send a copy of the certificate to the Agency
 313 for Health Care Administration on the next working day.

314 b. A physician assistant or an advanced registered nurse
 315 practitioner may not execute a certificate as provided in sub-
 316 subparagraph a. unless he or she completed at least 40 clock
 317 hours of training approved by the Board of Medicine or the Board
 318 of Nursing, as appropriate, concerning the Florida Mental Health
 319 Act or mental health as part of his or her education and
 320 training program or has passed a national certification exam
 321 that includes testing on mental health law or the care of
 322 patients with mental illness or has subsequently completed and
 323 passed a 40-clock-hour course, approved by the relevant board,
 324 concerning the Florida Mental Health Act or mental health. A
 325 college or university that currently includes the Florida Mental
 326 Health Act or mental health in its curriculum shall be
 327 grandfathered. In addition, such a physician assistant or
 328 advanced registered nurse practitioner may not execute a
 329 certificate as provided in sub-subparagraph a. unless he or she
 330 biannually completes 2 hours of approved continuing education
 331 concerning the Florida Mental Health Act.

332 Section 4. Paragraphs (a) and (c) of subsection (3) of
 333 section 394.495, Florida Statutes, are amended to read:

334 394.495 Child and adolescent mental health system of care;
 335 programs and services.—

336 (3) Assessments must be performed by:

337 (a) A professional as defined in s. 394.455(3), (5), (27),

338 (30), or (31) ~~394.455(2), (4), (21), (23), or (24);~~

339 (c) A person who is under the direct supervision of a
 340 professional as defined in s. 394.455(3), (5), (27), (30), or
 341 (31) ~~394.455(2), (4), (21), (23), or (24)~~ or a professional
 342 licensed under chapter 491.

343
 344 The department shall adopt by rule statewide standards for
 345 mental health assessments, which must be based on current
 346 relevant professional and accreditation standards.

347 Section 5. Subsection (6) of section 394.496, Florida
 348 Statutes, is amended to read:

349 394.496 Service planning.—

350 (6) A professional as defined in s. 394.455(3), (5), (27),
 351 (30), or (31) ~~394.455(2), (4), (21), (23), or (24)~~ or a
 352 professional licensed under chapter 491 must be included among
 353 those persons developing the services plan.

354 Section 6. Subsection (6) of section 394.9085, Florida
 355 Statutes, is amended to read:

356 394.9085 Behavioral provider liability.—

357 (6) For purposes of this section, the terms "receiving
 358 facility," "addictions receiving facility," and "detoxification
 359 services," ~~"addictions receiving facility," and "receiving~~
 360 ~~facility"~~ have the same meanings as ~~those~~ provided in ss.
 361 394.455(33), 397.311(18)(a)1., and 397.311(18)(a)4.,
 362 ~~397.311(18)(a)1., and 394.455(26),~~ respectively.

363 Section 7. Paragraph (b) of subsection (2) of section

364 409.972, Florida Statutes, is amended to read:

365 409.972 Mandatory and voluntary enrollment.—

366 (2) The following Medicaid-eligible persons are exempt
 367 from mandatory managed care enrollment required by s. 409.965,
 368 and may voluntarily choose to participate in the managed medical
 369 assistance program:

370 (b) Medicaid recipients residing in residential commitment
 371 facilities operated through the Department of Juvenile Justice
 372 or mental health treatment facilities as defined by s.
 373 394.455(40) ~~394.455(32)~~.

374 Section 8. Subsection (7) of section 744.704, Florida
 375 Statutes, is amended to read:

376 744.704 Powers and duties.—

377 (7) A public guardian shall not commit a ward to a mental
 378 health treatment facility, as defined in s. 394.455(40)
 379 ~~394.455(32)~~, without an involuntary placement proceeding as
 380 provided by law.

381 Section 9. This act shall take effect July 1, 2014.