

**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 Children, Families, and Elder Affairs Committee

**BILL:** CS/SB 2612

**INTRODUCER:** Children, Families, and Elder Affairs and Senator Wise

**SUBJECT:** Substance Abuse and Mental Health Services

**DATE:** March 26, 2009      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Walsh	CF	Fav/CS
2.	_____	_____	HR	_____
3.	_____	_____	HA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Committee Substitute for Senate Bill 2612 makes numerous technical and conforming changes to statutes relating to substance abuse and mental health services. The bill includes the following changes:

- The bill deletes a requirement for a contract between the Department of Children and Families (DCF or the department) and residential treatment facilities. The bill sets client eligibility for substance abuse and mental health services by establishing priority populations to receive these services.
- The bill revises legislative intent for the substance abuse services program.
- The bill makes substantial changes to the definitions in Chapter 397, Substance Abuse Services.
- The bill makes substantial changes to the licensure process for substance abuse programs and would require licenses to be issued by service component, rather than the current process of issuing a license by facility (physical location). The change to service component licensure will reduce the number of licenses issued by the program by an estimated 40 percent. Fee collections for licenses issued will also be reduced an estimated 40 percent and service providers will pay less for licensure.

- The bill requires the department to coordinate licensure inspections with other state agencies.
- The bill provides a process for medication assisted treatment services.
- The bill amends language in chapter 397 to replace “client” with “individual” and “service district” with “sub-state entity.”
- The bill authorizes DCF to establish a medical review committee for quality assurance of substance abuse, mental health, and forensic programs.

This bill substantially amends ss 212.055; 394.67; 394.674; 394.9085; 397.301; 397.305; 397.311; 397.321; 397.331; 397.401; 397.403; 397.405; 397.406; 397.407; 397.411; 397.415; 397.416; 397.419; 397.427; 397.431; 397.451; 397.471; 397.501; 397.581; 397.601; 397.6751; 397.6752; 397.6758; 397.6773; 397.6797; 397.6799; 397.6819; 397.6821; 397.6822; 397.697; 397.6971; 397.6975; 397.6977; 397.702; 397.706; 397.801; 397.821; 397.94; 397.95; 397.97; 397.99; 440.102; and 766.101, F.S. The bill repeals ss. 394.9081 and 397.409, F.S.

## II. Present Situation:

The Substance Abuse Program is designed to support the prevention and remediation of substance abuse through the provision of a comprehensive system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

### **Child and Adult Substance Abuse Prevention and Services**

Both the United States Congress and the Florida Legislature have recognized that substance abuse is a major health problem and leads to profoundly disturbing consequences such as serious impairment, chronic addiction, criminal behavior, injury, death, and contributes to spiraling health care cost. Substance abuse impairment is a disease which affects the whole family as well as the community and requires effective, specialized prevention, intervention, and treatment services.

During FY 2006-07, **110,933 adults** and **53,892 children** were served by agencies under contract with the department for substance abuse services. The Substance Abuse program has two primary target groups: persons at risk for developing substance abuse problems (prevention), and persons with substance abuse problems (treatment). Priority populations for receiving treatment include: persons involved in the criminal and juvenile justice systems, women with children, families involved in the child protection system, persons with co-occurring substance use and mental disorders, and intravenous drug users.<sup>1</sup>

The program provides services to these individuals to reduce the occurrence, severity, and disabling effects of substance abuse problems. Substance abuse prevention, treatment, and other services are provided throughout the state by local substance abuse providers in the department's 20 circuits. The Substance Abuse program also partners with other agencies to provide health, education, and social services for individuals and their families. Major functions of the program are planning, policy development, implementation and administration, administration of funds,

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<sup>1</sup> OPPAGA, *FGAR, DCF Substance Abuse Program*, available at <http://www.oppaga.state.fl.us/profiles/5057/> (last visited March 20, 2009).

provision of a comprehensive and integrated system of care, and the regulation of substance abuse services and treatment facilities.<sup>2</sup>

The program services for adults and children include:

- Prevention services;
- Intervention services;
- Assessment services;
- Residential treatment;
- Non-residential treatment; and
- Detoxification services.<sup>3</sup>

#### *Detoxification Programs*

The department provides detoxification programs<sup>4</sup> for both children and adults on a residential or outpatient basis and uses medical and clinical procedures to assist an individual in his or her efforts to withdraw from the physiological and psychological effects of substance abuse. Residential detoxification and addictions receiving facilities for adults provide emergency screening, short-term stabilization, and treatment in a secure environment 24 hours a day, seven days a week. Outpatient detoxification provides structured activities four hours a day, seven days a week.

According to the department, **2,364 children** and **21,819 adults** received detoxification treatment in FY 2006-07.<sup>5</sup>

#### *Prevention Programs*

The department provides prevention programs<sup>6</sup> for both children and adults, including services to individuals and groups, as well as assistance to communities, for the purpose of reducing substance abuse and risk factors related to substance abuse. Programs are discrete collections of activities conducted in a certain order over a given period of time with an individual or group that would benefit from completing the schedule of activities.

During FY 2006-07, **141,613 at risk children** and **106,000 adults** were served in prevention services.<sup>7</sup> Ninety-eight percent of the children at risk of substance abuse who received targeted prevention services were not admitted to substance abuse services during the 12 months after completion of prevention services.<sup>8</sup>

#### *Treatment and Aftercare Services*

The department provides treatment and aftercare services<sup>9</sup> for both children and adults that focus on reducing and eliminating substance use among identified populations in order to promote

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Sections 397.305, 397.311(18)(a), 397.321, 397.675, 397.901, 397.92, and 397.93, F.S.

<sup>5</sup> Department of Children and Families, *Sunset Review Agency Report to the Legislature*, at pages 144, 146 (July 1, 2008).

<sup>6</sup> Sections 397.21 397.305, 397.92, 397.93, and 397.99, F.S.

<sup>7</sup> Department of Children and Families, *Sunset Review Agency Report to the Legislature*, at pages 144, 147 (July 1, 2008).

<sup>8</sup> *Id.*

<sup>9</sup> Sections 397.305, 397.321, 397.334, 397.427, 397.675, 397.92, 397.93, and 397.99, F.S.

positive outcomes such as contributing to family unity and stability for minor children, reducing involvement in the criminal justice system, and maintaining a drug-free lifestyle.<sup>10</sup>

### III. Effect of Proposed Changes:

#### Section 1

CS/SB 2612 amends s. 212.055, F.S., conforming a cross-reference.

#### Section 2

The bill amends s. 394.67(21), F.S., removing a requirement that a residential treatment center for children and adolescents be under contract with DCF. These facilities were previously licensed and paid through DCF but this function has since been shifted to the Agency for Health Care Administration. It adds clarifying language to provide that the treatment centers are licensed by AHCA.

#### Sections 3 and 50

The bill amends s. 394.674, F.S., by replacing the words “target groups” with “priority populations” when describing who is eligible to receive substance abuse and mental health services. It requires that those eligible to receive these funds must be a member of at least one of DCF’s priority populations. It provides that priority populations include a(n):

- Adult mental health priority population,
- Children’s mental health priority population, and
- Substance abuse priority population.

In current law, s. 394.4081, F.S., requires that DCF include in its target groups for substance abuse and mental health services

- Older adults in crisis,
- Older adults who are at risk of being placed in a more restrictive environment because of their mental illness or substance abuse,
- Older adults with severe and persistent mental illness, and
- Older adults in need of substance abuse treatment.

The bill repeals this section of the law, and includes

- Older adults in crisis, and
- Older adults who are at risk of being placed in a more restrictive environment because of their mental illness or substance abuse

within the newly-defined priority populations in amended s. 394.674, F.S.

The bill removes older adults with severe and persistent mental illness, and older adults in need of substance abuse treatment from among those enumerated in the adult mental health and substance abuse priority populations.

The bill provides the department with the authority to establish rules relating to client eligibility and enrollment in publicly funded substance abuse and mental health services.

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<sup>10</sup> Department of Children and Families, *Sunset Review Agency Report to the Legislature*, at page 145 (July 1, 2008).

**Section 4**

The bill amends s. 394.9085, F.S., conforming a cross reference.

**Section 5**

The bill amends s. 397.301, F.S., removing the words “of 1993” from the title of the “Hal S. Marchman Alcohol and Other Drug Services Act of 1993.”

**Section 6**

The bill amends s. 397.305, F.S., to revise existing Legislative intent, purposes, and goals relating to substance abuse.

**Section 7**

The bill amends definitions in s. 397.311, F.S., as follows:

It replaces certain terms:

- Replacing the term “Client” with the term “Individual.”
- Replacing the term “Client identifying information” with “Identifying information.”
- Replacing the term “Assessment” with the newly-defined term “Clinical assessment,” which means the collection of detailed information concerning an individual’s substance use, emotional and physical health, social roles, and other areas that may reflect the severity of the individual’s abuse of alcohol or drugs. The collection of information serves as a basis for identifying an appropriate treatment regimen.
- Replacing the term “Quality assurance” with the term “Quality improvement.”

SB 2612 amends existing definitions for “Authorized agent of the department,” “Court,” “Detoxification,” “Intensive inpatient treatment,” “Outpatient treatment,” “Prevention,” and “Residential treatment.”

It substantially amends the definitions of:

- “Addictions receiving facility” by removing the requirement that each of these facilities be state owned, operated, or contracted and removing the description of an addictions receiving facility’s security and staffing requirements. The bill places the definition of the term “Addictions receiving facility” within the definition of the term “Clinical treatment services” as a licensable service component.
- “Licensed service provider” to include a description of the licensable service components of clinical treatment, intervention, and prevention.
- “Qualified professional” to include advanced registered nurse practitioners licensed under part I of Chapter 464.

The bill adds definitions for the following terms:

- “Day or night treatment” is a service provided in a nonresidential environment, with a structured schedule of treatment and rehabilitative services.
- “Intensive outpatient treatment” is a service that provides individual or group counseling in a more structured environment, is a higher intensity and duration than outpatient

- treatment, and is provided to individuals who meet the placement criteria for this component.
- “Medication-assisted treatment (MAT)” is the use of medications approved by the United States Food and Drug Administration, in combination with counseling and behavioral therapies, to provide a holistic approach to the treatment of substance use disorder.
  - “Medication-assisted treatment for opiate addiction” is a service that uses methadone or other medication as authorized by state and federal law, in combination with medical, rehabilitative, and counseling services in the treatment of individuals who are dependent on opioid drugs.
  - “Recovery” means a process of personal change through which individuals achieve abstinence from alcohol or drug use and improve health, wellness, and quality of life.
  - “Recovery support” means services designed to strengthen or assist individuals to regain skills, develop the environmental supports necessary to help the individual thrive in the community, and meet life goals that promote recovery from alcohol and drug use. These services include, but are not limited to, economic, vocational, employment, educational, housing, and other ancillary services.
  - “Screening” means the gathering of initial information to be used in determining a person's need for assessment, services, or referral.
  - “Service component” or “component” means a discrete operational entity within a service provider that is subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment described in subsection (17).
  - “Substate entity” means a departmental office designated to serve a geographical area specified by the department.
  - “System of care” means a coordinated continuum of community-based services and supports that are organized to meet the challenges and needs of individuals who are at risk of developing substance abuse problems or individuals who have substance abuse problems.
  - “Treatment plan” means an immediate and a long-range plan based upon an individual’s assessed needs and used to address and monitor an individual’s recovery from substance abuse.

### **Section 8**

The bill amends s. 397.321, F.S., providing that the department develop partnerships with the Department of Juvenile Justice, Department of Health, Department of Financial Services, and the Agency for Health Care Administration.

The bill provides that DCF develop a certification process by rule for community substance abuse prevention coalitions.

The bill deletes the requirement that DCF establish a pilot project in District 9.

### **Section 9**

The bill makes conforming changes to s. 397.331, F.S.

### **Section 10**

The bill makes conforming changes to s. 397.401, F.S.

**Sections 11**

The bill makes technical changes to s. 397.403, F.S.

**Section 12**

The bill amends s. 397.405, F.S., providing crisis stabilization units licensed under s. 394.875, F.S., are exempt from substance abuse licensure. It also adds ARNP's to the list of licensed professionals whose practice may not be limited by virtue of ch. 397 requirements.

**Section 13**

The bill amends s. 397.406, F.S., adding the Department of Juvenile Justice to the list of departments required to be licensed to operate substance abuse programs.

**Sections 14 and 15**

The bill amends s. 397.407, F.S., by removing a requirement to phase in fee ranges for providers over a five year period. The bill also requires the department to consider the potential adverse impact on small, not-for-profit service providers while promulgating rules to govern the licensure process and fees. It appends to it s. 397,409, F.S., which is amended to:

- provide a process for issuing probationary, regular, and interim licenses by service component instead of by physical location, and
- provide that, notwithstanding s. 120.60(5), F.S., DCF can order a probationary licensee to cease and desist operation at any time it is found to be noncompliant with licensure standards, which action is exempt from the requirements of s. 120.60(6), F.S.<sup>11</sup>

The bill repeals s. 397.409, F.S.

**Section 16**

The bill amends s. 397.411, F.S., requiring the department to notify other state agencies of scheduled licensure inspections to improve coordination of licensure inspections.

**Section 17**

The bill amends s. 397.415, F.S., providing that the department may suspend or revoke the license of any service provider as to the operation of any service component or location on the license, which will result in the provider being barred from applying for licensure for that service component or location for one year.

The bill requires that administrative fines are to be deposited in the Operations and Maintenance Trust Fund, rather than the Substance Abuse Impairment Provider Licensing Trust Fund.

**Section 18**

The bill makes conforming changes to s. 397.416, F.S.,

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<sup>11</sup> Section 120.60, F.S., is that section of the Administrative Procedures Act relating to licensing. Subsection (5) requires that an agency must, prior to revocation, suspension, annulment or withdrawal of any license, serve on the licensee an administrative complaint affording notice of the grounds for the action. Subsection (6) requires that if an agency determines that an emergency suspension is warranted, it must use a procedure that provides "at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution."

**Section 19**

The bill amends s. 397.419, F.S., renaming the quality assurance program, the quality improvement program. It deletes the requirements that this program be implemented as part of DCF's contract management process, and that it track the performance standards and measures established by the Legislature as part of the performance-based budgeting process. The bill also repeals the provision that the department incorporate a peer review process in this protocol.

**Section 20**

The bill amends s. 397.427, F.S., removing the term "methadone" and replacing it with the more-general medication or treatment for "opiate addiction."

The bill also changes the term "Medication treatment services" to "Medication-assisted treatment services" to reflect advances in addiction treatment to include medications other than methadone. The department is required to determine "the need for establishing medication-assisted treatment for substance-use disorders other than opiate dependence."

The bill provides the department with rulemaking authority relating to the administering of medication-assisted treatment services. The bill provides that the provision of medication-assisted treatment services may include delivery of medication by a registered nurse, ARNP, or LPN.

**Section 21**

The bill makes technical and conforming changes to s. 397.431, F.S.

**Section 22**

The bill amends s. 397.451, F.S., providing that personnel employed directly or under contract with the Department of Corrections in an inmate substance abuse program is exempt from the level two background screening requirement of ch. 435, F.S.

**Sections 23 – 48**

The bill amends numerous section of law, making technical and conforming changes.

**Section 49**

The bill amends s. 766.101, F.S., to include a committee of employees, agents, or consultants of the department within the definition of a medical review committee for the purpose of reviewing activities of treatment services.

**Section 51**

The bill provides an effective date of July 1, 2009.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

**Lines 1061-1065:** The Committee Substitute provides that, notwithstanding s. 120.60(5), F.S., DCF can order a probationary licensee to cease and desist operation at any time it is found to be noncompliant with licensure standards, which action is exempt from the requirements of s. 120.60(6), F.S. Because those sections of the Administrative Procedures Act set forth the procedures designed to ensure that licensees receive due process relating to state action against their property rights in the license, this provision may raise constitutional concerns.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department reports that the proposed changes in licensing provisions will reduce the number of substance abuse licenses by approximately 40 percent, depending on the number of program components a provider operates. The department issues an average of 1,650 substance abuse licenses per year. The provisions of the bill would reduce the number of licenses to approximately 990 annually.

The department reports that it will increase license fees to retain the needed state revenue but keep the provisions of the bill cost neutral.

**VI. Technical Deficiencies:**

**Section 49** (Lines 2171 – 2175): The flush left language after sub-subparagraph k. in s. 766.101(1)(a)1, F.S., describes the purpose of a medical review committee. The language proposed in the bill, which describes a particular purpose for DCF's medical review committee, appears to be at odds with the flush left language applicable to the sub-subparagraph. This language, which is found in the medical malpractice statute, is related to the review of the actions of doctors, dentists, podiatrists, optometrists, chiropractors, pharmacists, and hospitals. It is unclear whether this language will accomplish what DCF intends.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Children, Families, and Elder Affairs on March 25, 2009:**

- Changes the bill title, clarifying that the act relates to both substance abuse and mental health services.
- Removes a provision stating that it is the purpose of the Legislature to provide funds.
- Clarifies Legislative intent regarding individuals with a co-occurring substance abuse and mental disorder.
- Reinstates legislative intent language relating to religious freedom.
- Reinstates definitions that were inadvertently removed in the original bill.
- Requires that the department develop a certification process by rule for community substance abuse prevention coalitions.
- Clarifies that no license may be issued if the results of a background screening indicate that the owner, director, or chief financial officer failed to meet the screening standard.
- Removes rulemaking authority relating to treatment standards.
- Reinstates language requiring that the fees collected from licensure are sufficient to cover at least 50 percent of the costs of regulating the service component.
- Requires that the department take into consideration the impact of increased fees on small providers.
- Clarifies that the certification process for substance abuse prevention coalitions will be established in rule by the department.

**B. Amendments:**

None.