

1 A bill to be entitled
2 An act relating to mental health; revising part I of ch.
3 394, F.S., relating to the Florida Mental Health Act, to
4 substitute the term "individual" for the terms "person,"
5 "patient," or "client"; amending s. 394.453, F.S.;
6 conforming terms; amending s. 394.455, F.S.; redefining
7 terms, defining new terms, and deleting terms; amending s.
8 394.457, F.S.; conforming terms; amending s. 394.4572,
9 F.S.; conforming terms; deleting certain background
10 screening requirements and exemptions for certain mental
11 health professionals; amending s. 394.4573, F.S.;
12 conforming terms; deleting a report requirement relating
13 to the implementation of staffing standards in state
14 treatment facilities; amending ss. 394.4574 and 394.458,
15 F.S.; conforming terms; amending s. 394.459, F.S.;
16 conforming terms; revising requirements for a physical
17 examination and psychiatric evaluation and requiring the
18 examination to be documented in the clinical record;
19 requiring facilities to provide procedures for reporting
20 events that place individuals receiving services at risk
21 of harm; requiring facilities to provide information and
22 assist individuals with advance directives; amending ss.
23 394.4593 and 394.4595, F.S.; conforming terms; amending s.
24 394.4597, F.S.; conforming terms; adding a health care
25 surrogate to list of persons to be noted in the clinical
26 record; specifying the rights, authority, and
27 responsibilities of a representative; amending s.
28 394.4598, F.S.; conforming terms; requiring a guardian

29 advocate to make every effort to make the decision the
30 individual would have made; amending s. 394.4599, F.S.;
31 conforming terms; adding the health care surrogate or
32 proxy to list of persons to receive notice of involuntary
33 admission; repealing s. 394.460, F.S., relating to the
34 rights of professionals; amending s. 394.461, F.S.;
35 conforming terms; specifying that only governmental
36 facilities and other facilities designated by the
37 Department of Children and Family Services may serve as
38 receiving and treatment facilities; revising facility data
39 that must be submitted to the Agency for Health Care
40 Administration; amending s. 394.4615, F.S.; conforming
41 terms; adding a health care surrogate or proxy to list of
42 persons that may waive confidentiality of a clinical
43 record; providing additional grounds for releasing a
44 clinical record; amending s. 394.462, F.S.; conforming
45 terms; providing that a law enforcement officer acting in
46 good faith may not be held liable for false imprisonment;
47 specifying when a county or law enforcement agency may be
48 reimbursed for transportation expenses; authorizing the
49 Department of Corrections to transport an individual under
50 certain circumstances; amending s. 394.4625, F.S.;
51 conforming terms; requiring a minor's assent to voluntary
52 admission; requiring an individual who has been
53 voluntarily admitted and charged with a crime to be
54 returned to the custody of a law enforcement agency after
55 discharge; amending s. 394.463, F.S.; conforming terms;
56 requiring an ex parte order for involuntary examination to

57 | be based on specific facts and have occurred within the
58 | last 14 days; providing that a certificate for involuntary
59 | examination is valid only until the individual is
60 | delivered to a receiving facility or for 7 days after the
61 | certificate is executed; providing notification
62 | requirements to guardians of minors who are involuntarily
63 | examined; revising the procedures for holding a person for
64 | involuntary examination and for emergency situations;
65 | requiring an individual charged with a crime who has been
66 | voluntarily or involuntarily admitted to be returned to
67 | the custody of a law enforcement agency after discharge;
68 | amending s. 394.4655, F.S.; conforming terms; revising
69 | criteria for requesting a continuance for a hearing on
70 | involuntary outpatient placement; amending s. 394.467,
71 | F.S.; conforming terms; requiring a facility to send a
72 | copy of the petition for involuntary inpatient placement
73 | to the Agency for Health Care Administration; requiring an
74 | attorney representing an individual in involuntary
75 | placement to represent the individual's expressed desires
76 | and be present at all hearings; requiring the state
77 | attorney to participate in all hearings on involuntary
78 | placement; prohibiting continuance requests from parties
79 | other than the individual; requiring the court to also
80 | conduct a hearing on capacity to consent to treatment;
81 | providing for the appointment of a guardian advocate if an
82 | individual is found incompetent; requiring the court to
83 | determine that an individual has knowingly waived his or
84 | her attendance at the hearing; requiring the court to

85 | allow certain testimony at hearings on involuntary
 86 | placement if a continuance is granted; requiring the
 87 | Division of Administrative Hearings to inform an
 88 | individual of his or her right to an independent expert
 89 | examination; amending ss. 394.46715 and 394.4672, F.S.;
 90 | conforming terms; repealing s. 394.4674, F.S., relating to
 91 | a plan and report on the deinstitutionalization of
 92 | patients in treatment facilities; amending s. 394.4685,
 93 | F.S.; conforming terms; authorizing a public facility to
 94 | request the transfer of an individual to a private
 95 | facility; amending s. 394.469, F.S.; conforming terms;
 96 | requiring a discharged individual who is charged with a
 97 | crime to be returned to the custody of a law enforcement
 98 | agency; amending ss. 394.473, 394.475, 394.4785, 394.4786,
 99 | 394.47865, 394.4787, 394.4788, and 394.4789, F.S.;
 100 | conforming terms; amending ss. 39.407, 394.495, 394.496,
 101 | 394.9085, 419.001, and 744.704, F.S.; conforming cross-
 102 | references; providing an effective date.

103 |
 104 | Be It Enacted by the Legislature of the State of Florida:

105 |
 106 | Section 1. Section 394.453, Florida Statutes, is amended
 107 | to read:

108 | 394.453 Legislative intent.—It is the intent of the
 109 | Legislature to authorize and direct the Department of Children
 110 | and Family Services to evaluate, research, plan, and recommend
 111 | to the Governor and the Legislature programs designed to reduce
 112 | the occurrence, severity, duration, and disabling aspects of

HB 1213

2010

113 mental, emotional, and behavioral disorders. It is the intent of
 114 the Legislature that treatment programs for such disorders ~~shall~~
 115 ~~include, but not be limited to,~~ comprehensive health, social,
 116 educational, and rehabilitative services for individuals ~~to~~
 117 ~~persons~~ requiring intensive short-term and continued treatment
 118 in order to encourage them to assume responsibility for their
 119 treatment and recovery. It is intended that such individuals
 120 ~~persons~~ be provided with emergency service and temporary
 121 detention for evaluation if ~~when~~ required; that they be admitted
 122 to treatment facilities if ~~on a voluntary basis when~~ extended or
 123 continuing care is needed and unavailable in the community; that
 124 involuntary placement be provided only if ~~when~~ expert evaluation
 125 determines that it is necessary; that any involuntary treatment
 126 or examination be accomplished in a setting that ~~which~~ is
 127 clinically appropriate and most likely to facilitate the
 128 individual's ~~person's~~ return to the community as soon as
 129 possible; and that ~~individual~~ dignity and human rights be
 130 guaranteed to all individuals ~~persons~~ who are admitted to mental
 131 health facilities or who are being held under s. 394.463. It is
 132 the further intent of the Legislature that the least restrictive
 133 means of intervention be employed based on the individual's
 134 ~~individual~~ needs ~~of each person,~~ within the scope of available
 135 services. It is the policy of this state that the use of
 136 restraint and seclusion ~~on clients~~ is justified only as an
 137 emergency safety measure to be used in response to imminent
 138 danger to the individual ~~client~~ or others. It is, therefore, the
 139 intent of the Legislature to achieve an ongoing reduction in the
 140 use of restraint and seclusion in programs and facilities

141 serving individuals who have ~~persons with~~ mental illness.

142 Section 2. Section 394.455, Florida Statutes, is amended
143 to read:

144 394.455 Definitions.—As used in this part, ~~unless the~~
145 ~~context clearly requires otherwise,~~ the term:

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

148 (2) "Adult" means an individual who is 18 years of age or
149 older or who has had the disability of nonage removed pursuant
150 to s. 743.01 or s. 743.015.

151 (3) "Advance directive" has the same meaning as in s.
152 765.101.

153 (4)~~(2)~~ "Clinical psychologist" means a psychologist as
154 defined in s. 490.003 ~~490.003(7) with 3 years of postdoctoral~~
155 ~~experience in the practice of clinical psychology, inclusive of~~
156 ~~the experience required for licensure,~~ or a psychologist
157 employed by a facility operated by the United States Department
158 of Veterans Affairs or the United States Department of Defense
159 ~~that qualifies as a receiving or treatment facility under this~~
160 ~~part.~~

161 (5)~~(3)~~ "Clinical record" means all parts of the record
162 required to be maintained and includes all medical records,
163 progress notes, charts, and admission and discharge data, and
164 all other information recorded by a facility staff which
165 pertains to an individual's ~~the patient's~~ hospitalization or
166 treatment.

167 (6)~~(4)~~ "Clinical social worker" has the same meaning as in
168 s. 491.003 ~~means a person licensed as a clinical social worker~~

169 ~~under chapter 491.~~

170 (7)~~(5)~~ "Community facility" means a ~~any~~ community service
 171 provider contracting with the department to furnish substance
 172 abuse or mental health services under part IV of this chapter.

173 (8)~~(6)~~ "Community mental health center or clinic" means a
 174 publicly funded, not-for-profit center that ~~which~~ contracts with
 175 the department for the provision of inpatient, outpatient, day
 176 treatment, or emergency services.

177 (9)~~(7)~~ "Court," unless otherwise specified, means the
 178 circuit court.

179 (10)~~(8)~~ "Department" means the Department of Children and
 180 Family Services.

181 (11) "Electronic means" means a form of telecommunication
 182 that requires all parties to maintain visual as well as audio
 183 communication.

184 (12)~~(9)~~ "Express and informed consent" means consent
 185 voluntarily given in writing, by a competent individual ~~person~~,
 186 after sufficient explanation and disclosure of the subject
 187 matter involved to enable the individual ~~person~~ to make a
 188 knowing and willful decision without any element of force,
 189 fraud, deceit, duress, or other form of constraint or coercion.

190 (13)~~(10)~~ "Facility" means a ~~any~~ hospital, community
 191 facility, public or private facility, or receiving or treatment
 192 facility providing for the evaluation, diagnosis, care,
 193 treatment, training, or hospitalization of individuals ~~persons~~
 194 who appear to have ~~a mental illness~~ or who have been diagnosed
 195 as having a mental illness. The term "Facility" does not include
 196 a ~~any~~ program or entity licensed under ~~pursuant to~~ chapter 400

HB 1213

2010

197 or chapter 429.

198 (14) "Government facility" means a facility owned,
 199 operated, or administered by the Department of Corrections or
 200 the United States Department of Veterans Affairs.

201 (15)~~(11)~~ "Guardian" means the natural guardian of a minor,
 202 or a person appointed by a court to act on behalf of a ward's
 203 person if the ward is a minor or has been adjudicated
 204 incapacitated.

205 (16)~~(12)~~ "Guardian advocate" means a person appointed by a
 206 court to make decisions regarding mental health treatment on
 207 behalf of an individual ~~a patient~~ who has been found incompetent
 208 to consent to treatment pursuant to this part. The guardian
 209 advocate may be granted specific additional powers by written
 210 order of the court, as provided in this part.

211 (17)~~(13)~~ "Hospital" means a hospital ~~facility as defined~~
 212 ~~in s. 395.002 and~~ licensed under chapter 395 and part II of
 213 chapter 408.

214 (18)~~(14)~~ "Incapacitated" means that an individual ~~a person~~
 215 has been adjudicated incapacitated pursuant to part V of chapter
 216 744 and a guardian of the person has been appointed.

217 (19)~~(15)~~ "Incompetent to consent to treatment" means that
 218 an individual's ~~a person's~~ judgment is so affected by ~~his or her~~
 219 mental illness that he or she ~~the person~~ lacks the capacity to
 220 make a well-reasoned, willful, and knowing decision concerning
 221 his or her medical or mental health treatment.

222 (20) "Involuntary examination" means an examination
 223 performed under s. 394.463 to determine if an individual
 224 qualifies for involuntary inpatient treatment under s. 394.467

225 or involuntary outpatient treatment under s. 394.4655.

226 (21) "Involuntary placement" means involuntary outpatient
 227 treatment pursuant to s. 394.4655 or involuntary inpatient
 228 treatment pursuant to s. 394.467.

229 (22)~~(16)~~ "Law enforcement officer" has the same meaning as
 230 means a law enforcement officer as defined in s. 943.10.

231 (23) "Marriage and family therapist" has the same meaning
 232 as in s. 491.003.

233 (24) "Mental health counselor" has the same meaning as in
 234 s. 491.003.

235 (25)~~(17)~~ "Mental health overlay program" means a mobile
 236 service ~~that~~ which provides an independent examination for
 237 voluntary admission ~~admissions~~ and a range of supplemental
 238 onsite services to an individual who has ~~persons with~~ a mental
 239 illness in a residential setting such as a nursing home,
 240 assisted living facility, adult family-care home, or a
 241 nonresidential setting such as an adult day care center.
 242 Independent examinations provided ~~pursuant to this part~~ through
 243 a mental health overlay program must ~~only~~ be provided only under
 244 contract with the department ~~for this service~~ or be attached to
 245 a public receiving facility that is also a community mental
 246 health center.

247 (26)~~(18)~~ "Mental illness" means an impairment of the
 248 mental or emotional processes that exercise conscious control of
 249 one's actions or of the ability to perceive or understand
 250 reality, which impairment substantially interferes with the a
 251 person's ability to meet the ordinary demands of living,
 252 ~~regardless of etiology.~~ For the purposes of this part, the term

253 does not include a ~~retardation or~~ developmental disability as
 254 defined in chapter 393, intoxication, brain injury, dementia, or
 255 conditions manifested only by antisocial behavior or substance
 256 abuse impairment.

257 (27) "Minor" means an individual who is 17 years of age or
 258 younger and who has not had the disabilities of nonage removed
 259 pursuant to s. 743.01 or s. 743.015.

260 ~~(28)-(19)~~ "Mobile crisis response service" means a
 261 nonresidential crisis service attached to a public receiving
 262 facility and available 24 hours a day, 7 days a week, ~~through~~
 263 which provides immediate intensive assessments and
 264 interventions, including screening for admission into a
 265 receiving facility, ~~take place~~ for the purpose of identifying
 266 appropriate treatment services.

267 ~~(20) "Patient" means any person who is held or accepted~~
 268 ~~for mental health treatment.~~

269 ~~(29)-(21)~~ "Physician" means a medical practitioner licensed
 270 under chapter 458 or chapter 459 ~~who has experience in the~~
 271 ~~diagnosis and treatment of mental and nervous disorders~~ or a
 272 physician employed by a facility operated by the United States
 273 Department of Veterans Affairs or the United States Department
 274 of Defense ~~which qualifies as a receiving or treatment facility~~
 275 ~~under this part.~~

276 (30) "Physician assistant" means a person licensed as a
 277 physician assistant under chapter 458 or chapter 459.

278 ~~(31)-(22)~~ "Private facility" means any hospital or facility
 279 operated by a for-profit or not-for-profit corporation or
 280 association that provides mental health services and is not a

281 public facility.

282 ~~(32)-(23)~~ "Psychiatric nurse" means an advanced a
 283 registered nurse practitioner licensed under part I of chapter
 284 464 who has a national advanced practice certification from an
 285 approved nursing specialty board and a collaborative practice
 286 agreement with a psychiatrist on file with the Board of Nursing
 287 ~~master's degree or a doctorate in psychiatric nursing and 2~~
 288 ~~years of post-master's clinical experience under the supervision~~
 289 ~~of a physician.~~

290 ~~(33)-(24)~~ "Psychiatrist" means a medical practitioner
 291 licensed under chapter 458 or chapter 459 who has primarily
 292 diagnosed and treated mental and nervous disorders for at least
 293 ~~a period of not less than 3 years, inclusive of psychiatric~~
 294 ~~residency.~~

295 ~~(34)-(25)~~ "Public facility" means any facility that has
 296 contracted with the department to provide mental health services
 297 to all individuals ~~persons~~, regardless of ~~their~~ ability to pay,
 298 and is receiving state funds for such purpose.

299 ~~(35)-(26)~~ "Receiving facility" means any public or private
 300 facility expressly designated by the department to receive and
 301 hold individuals involuntarily ~~involuntary patients~~ under
 302 emergency conditions or for psychiatric evaluation and to
 303 provide short-term treatment. The term does not include a county
 304 jail.

305 ~~(36)-(27)~~ "Representative" means a person selected pursuant
 306 to s. 394.4597(2) ~~to receive notice of proceedings during the~~
 307 ~~time a patient is held in or admitted to a receiving or~~
 308 ~~treatment facility.~~

309 ~~(37)-(28)-(a)~~ "Restraint" means a physical device, method,
 310 or drug used to control behavior.

311 (a) A physical restraint is any manual method or physical
 312 or mechanical device, material, or equipment attached or
 313 adjacent to an ~~the~~ individual's body so that he or she cannot
 314 easily remove the restraint and which restricts freedom of
 315 movement or normal access to one's body.

316 (b) A drug used as a restraint is a medication used to
 317 control an individual's ~~the person's~~ behavior or to restrict his
 318 or her freedom of movement and is not part of the standard
 319 treatment regimen for an individual having ~~of a person with a~~
 320 diagnosed mental illness ~~who is a client of the department.~~
 321 Physically holding an individual ~~a person~~ during a procedure to
 322 forcibly administer psychotropic medication is a physical
 323 restraint.

324 (c) Restraint does not include physical devices, such as
 325 orthopedically prescribed appliances, surgical dressings and
 326 bandages, supportive body bands, or other physical holding ~~when~~
 327 necessary for routine physical examinations and tests; ~~or~~ for
 328 purposes of orthopedic, surgical, or other similar medical
 329 treatment; ~~when used~~ to provide support for the achievement of
 330 functional body position or proper balance; or ~~when used~~ to
 331 protect an individual ~~a person~~ from falling out of bed.

332 ~~(38)-(29)~~ "Seclusion" means the physical segregation ~~of a~~
 333 ~~person in any fashion~~ or involuntary isolation of an individual
 334 ~~a person~~ in a room or area from which the individual ~~person~~ is
 335 prevented from leaving. The prevention may be by physical
 336 barrier or by a staff member who is acting in a manner, or who

HB 1213

2010

337 is physically situated, so as to prevent the individual ~~person~~
338 from leaving the room or area. For purposes of this chapter, the
339 term does not mean isolation due to an individual's ~~a person's~~
340 medical condition or symptoms.

341 ~~(39)-(30)~~ "Secretary" means the Secretary of Children and
342 Family Services.

343 (40) "Service provider" means a public or private
344 receiving facility, an entity under contract with the department
345 to provide mental health services, a community mental health
346 center or clinic, a clinical psychologist, a clinical social
347 worker, a marriage and family therapist, a mental health
348 counselor, a physician, or a psychiatric nurse.

349 ~~(41)-(31)~~ "Transfer evaluation" means the process, as
350 approved by the appropriate ~~district~~ office of the department,
351 during which an individual ~~whereby a person who is being~~
352 ~~considered for placement in a state treatment facility is first~~
353 evaluated for appropriateness of admission to a state treatment
354 ~~the~~ facility by a community-based public receiving facility or
355 by a community mental health center or clinic if the public
356 receiving facility is not a community mental health center or
357 clinic.

358 ~~(42)-(32)~~ "Treatment facility" means a ~~any~~ state-owned,
359 state-operated, or state-supported hospital, or a community
360 mental health center, or clinic, designated by the department
361 for extended treatment and hospitalization of individuals who
362 have a mental illness, ~~beyond that provided for~~ by a receiving
363 facility or a, ~~of persons who have a mental illness, including~~
364 ~~facilities of the United States Government, and any private~~

365 facility designated by the department when rendering such
 366 services ~~to a person pursuant to the provisions of this part.~~
 367 ~~Patients treated in facilities of the United States Government~~
 368 ~~shall be solely those whose care is the responsibility of the~~
 369 ~~United States Department of Veterans Affairs.~~

370 ~~(33) "Service provider" means any public or private~~
 371 ~~receiving facility, an entity under contract with the department~~
 372 ~~of Children and Family Services to provide mental health~~
 373 ~~services, a clinical psychologist, a clinical social worker, a~~
 374 ~~marriage and family therapist, a mental health counselor, a~~
 375 ~~physician, a psychiatric nurse as defined in subsection (23), or~~
 376 ~~a community mental health center or clinic as defined in this~~
 377 ~~part.~~

378 ~~(34) "Involuntary examination" means an examination~~
 379 ~~performed under s. 394.463 to determine if an individual~~
 380 ~~qualifies for involuntary inpatient treatment under s.~~
 381 ~~394.467(1) or involuntary outpatient treatment under s.~~
 382 ~~394.4655(1).~~

383 ~~(35) "Involuntary placement" means either involuntary~~
 384 ~~outpatient treatment pursuant to s. 394.4655 or involuntary~~
 385 ~~inpatient treatment pursuant to s. 394.467.~~

386 ~~(36) "Marriage and family therapist" means a person~~
 387 ~~licensed as a marriage and family therapist under chapter 491.~~

388 ~~(37) "Mental health counselor" means a person licensed as~~
 389 ~~a mental health counselor under chapter 491.~~

390 ~~(38) "Electronic means" means a form of telecommunication~~
 391 ~~that requires all parties to maintain visual as well as audio~~
 392 ~~communication.~~

HB 1213

2010

393 Section 3. Section 394.457, Florida Statutes, is amended
 394 to read:

395 394.457 Operation and administration.—

396 (1) ADMINISTRATION.—The Department of Children and Family
 397 Services is designated the "Mental Health Authority" of Florida.
 398 The department and the Agency for Health Care Administration
 399 shall exercise executive and administrative supervision over all
 400 mental health facilities, programs, and services.

401 (2) RESPONSIBILITIES OF THE DEPARTMENT.—The department is
 402 responsible for:

403 (a) The planning, evaluation, and implementation of a
 404 complete and comprehensive statewide program of mental health,
 405 including community services, receiving and treatment
 406 facilities, child services, research, and training as authorized
 407 and approved by the Legislature, based on the annual program
 408 budget of the department. The department is also responsible for
 409 the coordination of efforts with other departments and divisions
 410 of the state government, county and municipal governments, and
 411 private agencies concerned with and providing mental health
 412 services. It is responsible for establishing standards,
 413 providing technical assistance, and supervising ~~exercising~~
 414 ~~supervision of~~ mental health programs ~~of,~~ and the treatment of
 415 individuals ~~patients~~ at, community facilities, other facilities
 416 serving individuals ~~for persons~~ who have a mental illness, and
 417 any agency or facility providing services under ~~to patients~~
 418 ~~pursuant to~~ this part.

419 (b) The publication and distribution of an information
 420 handbook to facilitate the understanding of ~~this part,~~ the

421 policies and procedures involved in the implementation of this
 422 part, and the responsibilities of the various service providers
 423 ~~of services~~ under this part. The department ~~It~~ shall stimulate
 424 research by public and private agencies, institutions of higher
 425 learning, and hospitals in the interest of the elimination and
 426 amelioration of mental illness.

427 (3) POWER TO CONTRACT.—The department may contract to
 428 provide, and be provided with, services and facilities in order
 429 to carry out its responsibilities under this part with respect
 430 to the following agencies: public and private hospitals;
 431 receiving and treatment facilities; clinics; laboratories;
 432 departments, divisions, and other units of state government; ~~the~~
 433 state colleges and universities; ~~the~~ community colleges; private
 434 colleges and universities; counties, municipalities, and ~~any~~
 435 other political subdivisions ~~governmental unit~~, including
 436 facilities of the United States Government; and any other public
 437 or private entity that ~~which~~ provides or needs facilities or
 438 services. Baker Act funds for community inpatient, crisis
 439 stabilization, short-term residential treatment, and screening
 440 services under this part must be allocated to each county
 441 pursuant to the department's funding allocation methodology.
 442 Notwithstanding ~~the provisions of~~ s. 287.057(5)(f), contracts
 443 for community-based Baker Act services for inpatient, crisis
 444 stabilization, short-term residential treatment, and screening
 445 ~~provided~~ under this part, other than those with other units of
 446 government, ~~to be provided for the department~~ must be awarded
 447 using competitive solicitation if sealed bids ~~when~~ the county
 448 commission of the county receiving the services makes a request

HB 1213

2010

449 to the department's circuit ~~district~~ office by January 15 of the
 450 contracting year. The office may ~~district shall~~ not enter into a
 451 competitively bid contract ~~under this provision~~ if such action
 452 will result in increases of state or local expenditures for
 453 Baker Act services within the circuit ~~district~~. Contracts for
 454 ~~these~~ Baker Act services using competitive solicitation are
 455 ~~sealed bids will be~~ effective for 3 years. The department shall
 456 adopt rules establishing minimum standards for such contracted
 457 services and facilities and shall make periodic audits and
 458 inspections to assure that the contracted services are provided
 459 and meet the standards of the department.

460 (4) APPLICATION FOR AND ACCEPTANCE OF GIFTS AND GRANTS.—

461 The department may apply for and accept any funds, grants,
 462 gifts, or services made available to it by any agency or
 463 department of the Federal Government or any other public or
 464 private agency or person ~~individual~~ in aid of mental health
 465 programs. All such moneys must ~~shall~~ be deposited in the State
 466 Treasury and ~~shall be~~ disbursed as provided by law.

467 (5) RULES.—The department shall adopt rules:

468 (a) ~~The department shall adopt rules~~ Establishing forms
 469 and procedures relating to the rights and privileges of
 470 individuals receiving ~~patients seeking~~ mental health examination
 471 or treatment from facilities under this part.

472 (b) ~~The department shall adopt rules~~ Necessary for the
 473 implementation and administration of the provisions of this
 474 part, ~~and~~ A program subject to ~~the provisions of this part~~ may
 475 ~~shall not be permitted to~~ operate unless rules designed to
 476 ensure the protection of the health, safety, and welfare of the

477 individuals examined and ~~patients treated~~ under ~~through~~ such
 478 program have been adopted. Such rules ~~adopted under this~~
 479 ~~subsection~~ must include provisions governing the use of
 480 restraint and seclusion which are consistent with recognized
 481 best practices and professional judgment; prohibit inherently
 482 dangerous restraint or seclusion procedures; establish
 483 limitations on the use and duration of restraint and seclusion;
 484 establish measures to ensure the safety of program participants
 485 and staff during an incident of restraint or seclusion;
 486 establish procedures for staff to follow before, during, and
 487 after incidents of restraint or seclusion; establish
 488 professional qualifications ~~of~~ and training for staff who may
 489 order or be engaged in the use of restraint or seclusion; and
 490 establish mandatory reporting, data collection, and data
 491 dissemination procedures and requirements. Such rules ~~adopted~~
 492 ~~under this subsection~~ must require that each instance of the use
 493 of restraint or seclusion be documented in the clinical record
 494 of the individual who has been restrained or secluded ~~patient~~.

495 (c) ~~The department shall adopt rules~~ Establishing minimum
 496 standards for services provided by a mental health overlay
 497 program or a mobile crisis response service.

498 (6) PERSONNEL.—

499 (a) The department shall, by rule, establish minimum
 500 standards of education and experience for professional and
 501 technical personnel employed in mental health programs,
 502 including members of a mobile crisis response service.

503 (b) The department shall design and distribute appropriate
 504 materials for the orientation and training of persons actively

HB 1213

2010

505 engaged in implementing the provisions of this part relating to
506 the involuntary examination and placement of individuals ~~persons~~
507 who are believed to have a mental illness.

508 (7) PAYMENT FOR CARE ~~OF PATIENTS~~.—Fees and fee collections
509 for individuals receiving treatment or services ~~patients~~ in
510 state-owned, state-operated, or state-supported treatment
511 facilities must ~~shall~~ be in accordance with ~~according to~~ s.
512 402.33.

513 Section 4. Section 394.4572, Florida Statutes, is amended
514 to read:

515 394.4572 Screening of mental health personnel.—

516 (1) ~~(a)~~ The department and the Agency for Health Care
517 Administration shall require employment screening for mental
518 health personnel using ~~the standards for~~ level 2 screening
519 standards provided in s. 435.04 ~~set forth in chapter 435~~.
520 "Mental health personnel" includes all program directors,
521 professional clinicians, staff members, and volunteers working
522 in public or private mental health programs and facilities who
523 have direct contact with individuals held for examination or
524 admitted for mental health treatment ~~unmarried patients under~~
525 ~~the age of 18 years. For purposes of this chapter, employment~~
526 ~~screening of mental health personnel shall also include, but is~~
527 ~~not limited to, employment screening as provided under chapter~~
528 ~~435.~~

529 (a) ~~(b)~~ Students in the health care professions who are
530 interning in a mental health facility licensed under chapter
531 395, where the primary purpose of the facility is not the
532 treatment of minors, are exempt from the fingerprinting and

HB 1213

2010

533 screening requirements ~~if, provided~~ they are under direct
534 supervision in the actual physical presence of a licensed health
535 care professional.

536 ~~(c) Mental health personnel working in a facility licensed~~
537 ~~under chapter 395 who have less than 15 hours per week of direct~~
538 ~~contact with patients or who are health care professionals~~
539 ~~licensed by the Agency for Health Care Administration or a board~~
540 ~~thereunder are exempt from the fingerprinting and screening~~
541 ~~requirements, except for persons working in mental health~~
542 ~~facilities where the primary purpose of the facility is the~~
543 ~~treatment of minors.~~

544 (b) ~~(d)~~ A volunteer who assists on an intermittent basis
545 for less than 40 hours per month is exempt from the
546 fingerprinting and screening requirements ~~if, provided~~ the
547 volunteer is under direct and constant supervision by persons
548 who meet the screening requirements of this section ~~paragraph~~
549 ~~(a)~~.

550 (2) The department or the Agency for Health Care
551 Administration may grant exemptions from disqualification as
552 provided in s. 435.07 ~~435.06~~.

553 (3) Prospective mental health personnel who have
554 previously been fingerprinted or screened pursuant to this
555 chapter, chapter 393, chapter 397, chapter 402, or chapter 409,
556 or teachers who have been fingerprinted pursuant to chapter
557 1012, who have not been unemployed for more than 90 days
558 thereafter, and who under the penalty of perjury attest to ~~the~~
559 completion of such fingerprinting or screening and to compliance
560 with the provisions of this section and the standards for level

561 1 screening under ~~contained in~~ chapter 435, are ~~shall~~ not be
 562 required to be refingerprinted or rescreened in order to comply
 563 with the ~~any~~ screening requirements of this part.

564 Section 5. Section 394.4573, Florida Statutes, is amended
 565 to read:

566 394.4573 Continuity of care management system; measures of
 567 performance; reports.—

568 (1) For the purposes of this section:

569 (a) "Case management" means ~~those~~ activities aimed at
 570 assessing the ~~client~~ needs, planning services, linking the
 571 service system ~~to a client~~, coordinating the various system
 572 components, monitoring service delivery, and evaluating the
 573 effect of service delivery for individuals eligible for publicly
 574 funded mental health services.

575 (b) "Case manager" means a person ~~an individual~~ who works
 576 with individuals who are eligible for publicly funded mental
 577 health services ~~clients~~, and their families and significant
 578 others~~,~~ to provide case management.

579 (c) "Client manager" means an employee of the department
 580 who is assigned to specific provider agencies and geographic
 581 areas to ensure that the full range of needed services is
 582 available to individuals who are eligible for publicly funded
 583 mental health services ~~clients~~.

584 (d) "Continuity of care management system" means a system
 585 that assures, within available resources, that individuals who
 586 are eligible for publicly funded mental health services ~~clients~~
 587 have access to the full array of services within the mental
 588 health services delivery system.

HB 1213

2010

589 (2) The department shall ~~is directed to~~ implement a
590 continuity of care management system for the provision of mental
591 health care, through the provision of client and case
592 management, including individuals ~~clients~~ referred from state
593 treatment facilities to community mental health facilities. Such
594 system must ~~shall~~ include a statewide network of client managers
595 and case managers ~~throughout the state~~ designed to:

596 (a) Reduce the possibility of an individual's ~~a client's~~
597 admission or readmission to a state treatment facility.

598 (b) Provide for the creation or designation of an agency
599 in each county to provide single intake services for each
600 individual ~~person~~ seeking mental health services. Such agency
601 shall provide information and referral services necessary to
602 ensure that such individuals ~~clients~~ receive the most
603 appropriate and least restrictive form of care, based on the
604 individual's ~~individual~~ needs ~~of the person seeking treatment~~.
605 Such agency shall have a single telephone number, operating 24
606 hours per day, 7 days per week, if ~~where~~ practicable, at a
607 central location, where each individual receiving mental health
608 services has ~~client will have~~ a client ~~central~~ record.

609 (c) Advocate on behalf of the individual receiving mental
610 health services ~~client~~ to ensure that all appropriate services
611 are provided ~~afforded to the client~~ in a timely and dignified
612 manner.

613 (d) Require a ~~that any~~ public receiving facility
614 initiating an individual's ~~a patient~~ transfer to a licensed
615 hospital for acute care mental health services not accessible
616 through the public receiving facility to ~~shall~~ notify the

617 hospital of the ~~such~~ transfer and send all records relating to
 618 the emergency psychiatric or medical condition.

619 (3) The department shall ~~is directed to~~ develop and
 620 include performance measures in contracts with service providers
 621 relating to ~~measures of performance with regard to~~ goals and
 622 objectives ~~as~~ specified in the state plan. ~~Such measures shall~~
 623 ~~use,~~ To the extent practical, such measures must use existing
 624 data collection methods and reports and may ~~shall~~ not require,
 625 ~~as a result of this subsection,~~ additional reports on the part
 626 of service providers. The department shall plan monitoring
 627 visits of community mental health facilities with other state,
 628 federal, and local governmental and private agencies charged
 629 with monitoring such facilities.

630 ~~(4) The department is directed to submit a report to the~~
 631 ~~Legislature, prior to April 1 of each year, outlining~~
 632 ~~departmental progress towards the implementation of the minimum~~
 633 ~~staffing patterns' standards in state mental health treatment~~
 634 ~~facilities. The report shall contain, by treatment facility,~~
 635 ~~information regarding goals and objectives and departmental~~
 636 ~~performance toward meeting each such goal and objective.~~

637 Section 6. Paragraph (a) of subsection (2) and subsection
 638 (3) of section 394.4574, Florida Statutes, are amended to read:

639 394.4574 Department responsibilities for a mental health
 640 resident who resides in an assisted living facility that holds a
 641 limited mental health license.—

642 (2) The department must ensure that:

643 (a) A mental health resident has been assessed by a
 644 psychiatrist, clinical psychologist, clinical social worker, or

HB 1213

2010

645 psychiatric nurse, or an individual who is supervised by one of
646 these professionals, and determined to be appropriate to reside
647 in an assisted living facility. The documentation must be
648 provided to the administrator of the facility within 30 days
649 after the mental health resident has been admitted to the
650 facility. An evaluation completed upon discharge from a state
651 mental health treatment facility ~~hospital~~ meets the requirements
652 of this subsection related to appropriateness for placement as a
653 mental health resident if it was completed within 90 days before
654 ~~prior to~~ admission to the facility.

655 (3) The secretary ~~of Children and Family Services~~, in
656 consultation with the Agency for Health Care Administration,
657 shall annually require each circuit ~~district~~ administrator to
658 develop, with community input, detailed plans that demonstrate
659 how the circuit ~~district~~ will ensure the provision of state-
660 funded mental health and substance abuse treatment services to
661 residents of assisted living facilities that hold a limited
662 mental health license. These plans must be consistent with the
663 substance abuse and mental health circuit ~~district~~ plan
664 developed pursuant to s. 394.75 and must address case management
665 services; access to consumer-operated drop-in centers; access to
666 services during evenings, weekends, and holidays; supervision of
667 the clinical needs of the residents; and access to emergency
668 psychiatric care.

669 Section 7. Subsection (1) of section 394.458, Florida
670 Statutes, is amended to read:

671 394.458 Introduction or removal of certain articles
672 unlawful; penalty.—

673 (1) ~~(a)~~ Except as authorized by law or as specifically
 674 authorized by the person in charge of a receiving or treatment
 675 facility ~~each hospital~~ providing mental health services under
 676 this part, it is unlawful to:

677 (a) Introduce into or upon the grounds of such facility
 678 ~~hospital~~, or to take or attempt to take or send from the
 679 facility ~~therefrom~~, any of the following articles, which are
 680 ~~hereby declared to be~~ contraband for the purposes of this
 681 section:

682 1. An ~~Any~~ intoxicating beverage or beverage that ~~which~~
 683 causes or may cause an intoxicating effect;

684 2. A ~~Any~~ controlled substance as defined in chapter 893;
 685 or

686 3. A firearm ~~Any firearms~~ or deadly weapon.

687 (b) ~~It is unlawful to~~ Transmit to, or attempt to transmit
 688 to, or cause or attempt to cause to be transmitted to, or
 689 received by, any individual receiving mental health services
 690 from a receiving or treatment facility ~~patient of any hospital~~
 691 ~~providing mental health services under this part~~ any article or
 692 thing declared by this section to be contraband, at any place
 693 ~~which is~~ outside of the grounds of such facility ~~hospital~~,
 694 ~~except as authorized by law or as specifically authorized by the~~
 695 ~~person in charge of such hospital~~.

696 Section 8. Section 394.459, Florida Statutes, is amended
 697 to read:

698 394.459 Rights of individuals receiving treatment and
 699 services ~~patients~~.

700 (1) RIGHT TO ~~INDIVIDUAL~~ DIGNITY.—It is the policy of this

701 state that the ~~individual~~ dignity of all individuals held for
 702 examination or admitted for mental health treatment ~~the patient~~
 703 ~~shall~~ be respected at all times and upon all occasions,
 704 including ~~any occasion~~ when the individual ~~patient~~ is taken into
 705 custody, held, or transported. Procedures, facilities, vehicles,
 706 and restraining devices used ~~utilized~~ for criminals or those
 707 accused of a crime ~~may~~ ~~shall~~ not be used in connection with
 708 individuals ~~persons~~ who have a mental illness, except for the
 709 protection of that individual ~~the patient~~ or others. Individuals
 710 ~~Persons~~ who have a mental illness but who are not charged with a
 711 criminal offense ~~may~~ ~~shall~~ not be detained or incarcerated in
 712 the jails of this state. An individual ~~A person~~ who is receiving
 713 treatment for mental illness ~~may~~ ~~shall~~ not be deprived of any
 714 constitutional rights. However, if such individual ~~a person~~ is
 715 adjudicated incapacitated, his or her rights may be limited to
 716 the same extent that the rights of any incapacitated person are
 717 limited by law.

718 (2) RIGHT TO TREATMENT.—Each individual held for
 719 examination or admitted for mental health treatment:

720 (a) May ~~A person shall~~ not be denied treatment for mental
 721 illness, and services ~~may~~ ~~shall~~ not be delayed at a receiving or
 722 treatment facility because of inability to pay. However, every
 723 reasonable effort to collect appropriate reimbursement for the
 724 cost of providing mental health services from individuals ~~to~~
 725 ~~persons~~ able to pay for services, including insurance or third-
 726 party payers ~~payments~~, shall be made by facilities providing
 727 services under ~~pursuant to~~ this part.

728 (b) Shall be provided ~~It is further the policy of the~~

729 ~~state that~~ the least restrictive appropriate available
 730 treatment, ~~be utilized~~ based on the individual's individual
 731 needs and best interests, ~~of the patient~~ and consistent with the
 732 optimum improvement of the individual's patient's condition.

733 (c) ~~Each person who remains at a receiving or treatment~~
 734 ~~facility for more than 12 hours~~ Shall be given a physical
 735 examination and psychiatric evaluation by ~~a~~ health practitioners
 736 ~~practitioner~~ authorized by law to give such examinations, within
 737 24 hours after arrival at such facility if they have not been
 738 released or discharged pursuant to s. 394.463(2) (h) or s.
 739 394.469. The physical examination and psychiatric evaluation
 740 must be documented in the clinical record.

741 (d) ~~Every patient in a facility~~ Shall be afforded the
 742 opportunity to participate in activities designed to enhance
 743 self-image and the beneficial effects of other treatments, as
 744 determined by the facility.

745 (e) ~~Not more than 5 days after admission to a facility,~~
 746 ~~each patient~~ Shall have and receive an individualized treatment
 747 plan in writing, which the individual patient has had an
 748 opportunity to assist in preparing and to review prior to ~~its~~
 749 implementation, within 5 days after admission to a facility. The
 750 plan must shall include a space for the individual's patient's
 751 comments and signature.

752 (3) RIGHT TO EXPRESS AND INFORMED ~~PATIENT~~ CONSENT.—

753 (a) ~~1.~~ Each individual patient entering treatment shall be
 754 asked to give express and informed consent for admission or
 755 treatment.

756 1. If the individual patient has been adjudicated

HB 1213

2010

757 incapacitated or found to be incompetent to consent to
758 treatment, express and informed consent must ~~to treatment shall~~
759 be sought instead from his or her ~~the patient's~~ guardian or
760 guardian advocate. If the individual patient is a minor, express
761 and informed consent for admission or treatment must be obtained
762 ~~shall also be requested from the patient's guardian. Express and~~
763 ~~informed consent for admission or treatment of a patient under~~
764 ~~18 years of age shall be required from the minor's~~ patient's
765 guardian, unless the minor is seeking outpatient crisis
766 intervention services under s. 394.4784. ~~Express and informed~~
767 ~~consent for admission or treatment given by a patient who is~~
768 ~~under 18 years of age shall not be a condition of admission when~~
769 ~~the patient's guardian gives express and informed consent for~~
770 ~~the patient's admission pursuant to s. 394.463 or s. 394.467.~~

771 2. Before giving express and informed consent, the
772 following information shall be provided and explained in plain
773 language to the individual patient, or to his or her ~~the~~
774 ~~patient's~~ guardian if the individual patient is an adult ~~18~~
775 ~~years of age or older~~ and has been adjudicated incapacitated, or
776 to his or her ~~the patient's~~ guardian advocate if the individual
777 ~~patient~~ has been found to be incompetent to consent to
778 treatment, or to both the individual patient and the guardian if
779 the individual patient is a minor: the reason for admission or
780 treatment; the proposed treatment; the purpose of the treatment
781 to be provided; the common risks, benefits, and side effects
782 ~~thereof~~; the specific dosage range for the medication, when
783 applicable; alternative treatment modalities; the approximate
784 length of care; the potential effects of stopping treatment; how

HB 1213

2010

785 treatment will be monitored; and that any consent given for
786 treatment may be revoked orally or in writing before or during
787 the treatment period by the individual receiving the treatment
788 ~~patient~~ or by a person who is legally authorized to make health
789 care decisions on the individual's behalf ~~of the patient~~.

790 (b) Before performing a medical procedure ~~In the case of~~
791 ~~medical procedures~~ requiring the use of a general anesthetic or
792 electroconvulsive treatment, ~~and prior to performing the~~
793 ~~procedure,~~ express and informed consent must ~~shall~~ be obtained
794 from the individual subject to the procedure ~~patient~~ if the
795 individual ~~patient~~ is legally competent, from the guardian of a
796 minor ~~patient~~, from the guardian of an individual ~~a patient~~ who
797 has been adjudicated incapacitated, or from the individual's
798 guardian advocate ~~of the patient~~ if the guardian advocate has
799 been given express court authority to consent to medical
800 procedures or electroconvulsive treatment as provided under s.
801 394.4598.

802 (c) If ~~When~~ the department is the legal guardian ~~of a~~
803 ~~patient,~~ or ~~is~~ the custodian of an individual ~~a patient~~ whose
804 physician is unwilling to perform a medical procedure, including
805 an electroconvulsive treatment, based solely on the individual's
806 ~~patient's~~ consent and whose guardian or guardian advocate is
807 unknown or unlocatable, the court shall hold a hearing to
808 determine the medical necessity of the ~~medical~~ procedure. The
809 individual subject to the procedure ~~must~~ ~~patient~~ ~~shall~~ be
810 physically present, ~~unless~~ his or her ~~the patient's~~ medical
811 condition precludes such presence, represented by counsel, and
812 provided the right and opportunity to be confronted with, and to

813 cross-examine, all witnesses alleging the medical necessity of
 814 such procedure. In such proceedings, the burden of proof by
 815 clear and convincing evidence is ~~shall be~~ on the party alleging
 816 the medical necessity of the procedure.

817 (d) The administrator of a receiving or treatment facility
 818 may, upon the recommendation of an individual's ~~the patient's~~
 819 attending physician, authorize emergency medical treatment,
 820 including a surgical procedure, if such treatment is deemed
 821 lifesaving, or ~~if~~ the situation threatens serious bodily harm to
 822 the individual patient, and the permission of the individual
 823 ~~patient~~ or his or her ~~the patient's~~ guardian or guardian
 824 advocate cannot be obtained.

825 (4) QUALITY OF TREATMENT.-

826 (a) Each individual held for examination or admitted for
 827 mental health treatment, or receiving involuntary outpatient
 828 treatment patient ~~shall receive services, including, for a~~
 829 ~~patient placed~~ under s. 394.4655, shall receive ~~those~~ services
 830 that are included in the court order which are suited to his or
 831 ~~her needs, and which shall be~~ administered skillfully, safely,
 832 and humanely with full respect for the individual's patient's
 833 dignity and personal integrity. Each individual must patient
 834 ~~shall~~ receive such medical, vocational, social, educational, and
 835 rehabilitative services as his or her condition requires in
 836 order to live successfully in the community. In order to achieve
 837 this goal, the department shall ~~is directed to~~ coordinate its
 838 mental health programs with all other programs of the department
 839 and other state agencies.

840 (b) Facilities shall develop and maintain, in a form

841 accessible to and readily understandable by individuals held for
 842 examination or admitted for mental health treatment, patients
 843 and consistent with rules adopted by the department, ~~the~~
 844 ~~following:~~

845 1. Criteria, procedures, and required staff training for
 846 the any use of close or elevated levels of supervision; ~~of~~
 847 restraint, seclusion, or isolation; ~~or of~~ emergency treatment
 848 orders; ~~and for the use of~~ bodily control and physical
 849 management techniques.

850 2. Procedures for documenting, monitoring, and requiring
 851 clinical review of all uses of the procedures described in
 852 subparagraph 1. and for documenting and requiring review of any
 853 incidents resulting in injury to individuals receiving services
 854 ~~patients.~~

855 3. A system for investigating, tracking, managing, and
 856 responding to complaints by individuals ~~persons~~ receiving
 857 services or persons ~~individuals~~ acting on their behalf.

858 4. Procedures for reporting events that place individuals
 859 receiving services at risk of harm. Such events must be reported
 860 to the department in accordance with department operating
 861 procedures after discovery and include, but are not limited to:

862 a. An individual whose life terminates due to a natural,
 863 unnatural, expected, or unexpected cause while in the facility
 864 or within 72 hours after release.

865 b. An injury sustained, or allegedly sustained, due to an
 866 accident, act of abuse, neglect, or suicide attempt requiring
 867 medical treatment by a licensed health care practitioner in an
 868 acute care medical facility.

869 c. The unauthorized departure or absence of an individual
 870 from a facility in which he or she has been held for involuntary
 871 examination or involuntary placement.

872 d. An unusual occurrence or circumstance precipitated by
 873 something uncommon, abnormal, or out of the ordinary, such as a
 874 tornado, kidnapping, riot, or hostage situation that jeopardizes
 875 the health, safety, or welfare of the individual.

876 e. An allegation of sexual battery upon the individual.

877 (c) A facility may not use seclusion or restraint for
 878 punishment, to compensate for inadequate staffing, or for the
 879 convenience of staff. Facilities shall ensure that all staff are
 880 made aware of these restrictions ~~on the use of seclusion and~~
 881 ~~restraint and shall make and maintain records that which~~
 882 demonstrate that this information has been conveyed to each
 883 ~~individual staff member members.~~

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

885 (a) Each individual held for examination or admitted for
 886 mental health treatment ~~person receiving services~~ in a facility
 887 providing mental health services under this part has the right
 888 to communicate freely and privately with persons outside the
 889 facility unless it is determined that such communication is
 890 likely to be harmful to the individual ~~person~~ or others. Each
 891 facility shall make ~~available as soon as reasonably possible to~~
 892 ~~persons receiving services~~ a telephone that allows for free
 893 local calls and access to a long-distance service available to
 894 the individual as soon as reasonably possible. A facility is not
 895 required to pay the costs of the individual's ~~a patient's~~ long-
 896 distance calls. The telephone must ~~shall~~ be readily accessible

HB 1213

2010

897 ~~to the patient~~ and shall be placed so that the individual
898 ~~patient~~ may use it to communicate privately and confidentially.
899 The facility may establish reasonable rules for the use of this
900 telephone ~~which, provided that the rules~~ do not interfere with
901 an individual's ~~a patient's~~ access to a telephone to report
902 abuse pursuant to paragraph (e).

903 (b) Each individual ~~patient~~ admitted to a facility under
904 ~~the provisions of~~ this part shall be allowed to receive, send,
905 and mail sealed, unopened correspondence; and the individual's
906 ~~no patient's~~ incoming or outgoing correspondence may not ~~shall~~
907 be opened, delayed, held, or censored by the facility unless
908 there is reason to believe that it contains items or substances
909 that ~~which~~ may be harmful to the individual ~~patient~~ or others,
910 in which case the administrator may direct reasonable
911 examination of such mail and may regulate the disposition of
912 such items or substances.

913 (c) Each facility shall allow ~~must permit~~ immediate access
914 to an individual held for examination or admitted for mental
915 health treatment ~~any patient~~, subject to the ~~patient's~~ right to
916 deny or withdraw consent at any time, by the individual, or by
917 the individual's ~~patient's~~ family members, guardian, guardian
918 advocate, representative, Florida statewide or local advocacy
919 council, or attorney, unless such access would be detrimental to
920 the individual ~~patient~~. If ~~the a patient's~~ right to communicate
921 or to receive visitors is restricted by the facility, written
922 notice of such restriction and the reasons for the restriction
923 shall be served on the individual and ~~patient,~~ the individual's
924 ~~patient's~~ attorney, and ~~the patient's~~ guardian, guardian

925 advocate, or representative,⁺ and such restriction, and the
 926 reasons for the restriction, must ~~shall~~ be recorded in ~~on~~ the
 927 ~~patient's~~ clinical record ~~with the reasons therefor~~. The
 928 restriction must ~~of a patient's right to communicate or to~~
 929 ~~receive visitors shall~~ be reviewed at least every 7 days. The
 930 right to communicate or receive visitors may ~~shall~~ not be
 931 restricted as a means of punishment. ~~Nothing in~~ This paragraph
 932 does not ~~shall be construed to~~ limit the provisions of paragraph
 933 (d).

934 (d) Each facility shall establish reasonable rules
 935 governing visitors, visiting hours, and the use of telephones by
 936 individuals held for examination or admitted for mental health
 937 treatment patients in the least restrictive possible manner. An
 938 individual has ~~Patients shall have~~ the right to contact and to
 939 receive communication from his or her attorney ~~their attorneys~~
 940 at any reasonable time.

941 (e) Each individual held for examination or admitted for
 942 ~~patient receiving~~ mental health treatment ~~in any facility~~ shall
 943 have ready access to a telephone in order to report an alleged
 944 abuse. The facility staff shall orally and in writing inform
 945 each individual patient of the procedure for reporting abuse and
 946 shall make every reasonable effort to present the information in
 947 a language the individual patient understands. A written copy of
 948 that procedure, including the telephone number of the central
 949 abuse hotline and reporting forms, must ~~shall~~ be posted in plain
 950 view.

951 (f) The department shall adopt rules providing a procedure
 952 for reporting abuse. Facility staff ~~shall be required~~, as a

HB 1213

2010

953 condition of employment, must ~~to~~ become familiar with the
954 requirements and procedures for ~~the~~ reporting ~~of~~ abuse.

955 (6) CARE AND CUSTODY OF PERSONAL EFFECTS ~~OF PATIENTS~~. The
956 rights of an individual held for examination or admitted for
957 mental health treatment ~~A patient's right~~ to the possession of
958 his or her clothing and personal effects shall be respected. The
959 facility may take temporary custody of such effects if ~~when~~
960 required for medical and safety reasons. The ~~A patient's~~
961 clothing and personal effects shall be inventoried upon their
962 removal into temporary custody. Copies of this inventory shall
963 be given to the individual patient and to his or her ~~the~~
964 ~~patient's~~ guardian, guardian advocate, or representative and
965 shall be recorded in the ~~patient's~~ clinical record. This
966 inventory may be amended upon the request of the individual
967 ~~patient~~ or his or her ~~the patient's~~ guardian, guardian advocate,
968 or representative. The inventory and any amendments to it must
969 be witnessed by two members of the facility staff and by the
970 individual patient, if he or she is able. All of ~~the a patient's~~
971 clothing and personal effects held by the facility must ~~shall~~ be
972 returned to the individual patient immediately upon his or her
973 ~~the~~ discharge or transfer ~~of the patient~~ from the facility,
974 unless such return would be detrimental to the individual
975 ~~patient~~. If personal effects are not returned ~~to the patient~~,
976 the reason must be documented in the clinical record along with
977 the disposition of the clothing and personal effects, which may
978 be given instead to the individual's patient's guardian,
979 guardian advocate, or representative. As soon as practicable
980 after an emergency transfer ~~of a patient~~, the individual's

Page 35 of 121

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1213-00

HB 1213

2010

981 ~~patient's~~ clothing and personal effects shall be transferred to
982 the individual's ~~patient's~~ new location, together with a copy of
983 the inventory and any amendments, unless an alternate plan is
984 approved by the individual ~~patient~~, if he or she is able, and by
985 his or her ~~the patient's~~ guardian, guardian advocate, or
986 representative.

987 (7) VOTING IN PUBLIC ELECTIONS.—An individual held for
988 examination or admitted for mental health treatment ~~A patient~~
989 who is eligible to vote ~~according to the laws of the state~~ has
990 the right to vote in the primary and general elections. The
991 department shall establish rules to enable such individuals
992 ~~patients~~ to obtain voter registration forms, applications for
993 absentee ballots, and absentee ballots.

994 (8) HABEAS CORPUS.—

995 (a) At any time, and without notice, an individual ~~a~~
996 ~~person~~ held for examination in a receiving or treatment
997 facility, or a relative, friend, guardian, guardian advocate,
998 representative, or attorney, or the department, on behalf of
999 such individual ~~person~~, may petition for a writ of habeas corpus
1000 to question the cause and legality of such detention and request
1001 that the court order a return to the writ in accordance with
1002 chapter 79. Each individual ~~patient~~ held in a facility shall
1003 receive a written notice of the right to petition for a writ of
1004 habeas corpus.

1005 (b) At any time, and without notice, an individual
1006 admitted for mental health treatment ~~a person who is a patient~~
1007 in a receiving or treatment facility, or a relative, friend,
1008 guardian, guardian advocate, representative, or attorney, or the

HB 1213

2010

1009 department, on behalf of such individual ~~person~~, may file a
 1010 petition in the circuit court in the county where the individual
 1011 ~~patient~~ is being held alleging that he or she ~~the patient~~ is
 1012 being unjustly denied a right or privilege granted under this
 1013 section herein or that a procedure authorized under this section
 1014 ~~herein~~ is being abused. Upon the filing of such a petition, the
 1015 court may ~~shall have the authority to~~ conduct a judicial inquiry
 1016 and ~~to~~ issue an ~~any~~ order ~~needed~~ to correct an abuse of the
 1017 provisions of this part.

1018 (c) The administrator of any receiving or treatment
 1019 facility receiving a petition under this subsection shall file
 1020 the petition with the clerk of the court on the next court
 1021 working day.

1022 (d) A ~~No~~ fee may not ~~shall~~ be charged for ~~the~~ filing ~~of~~ a
 1023 petition under this subsection.

1024 (9) VIOLATIONS.—The department shall report to the Agency
 1025 for Health Care Administration any violation of the rights or
 1026 privileges of individuals ~~patients~~, or of any procedures
 1027 provided under this part, by any facility or professional
 1028 licensed or regulated by the agency. The agency may ~~is~~
 1029 ~~authorized to~~ impose any sanction authorized for violation of
 1030 this part, based solely on the investigation and findings of the
 1031 department.

1032 (10) LIABILITY FOR VIOLATIONS.—Any person who violates or
 1033 abuses the ~~any~~ rights or privileges of individuals held for
 1034 examination or admitted for mental health treatment ~~patients~~
 1035 provided under ~~by~~ this part is liable for damages as determined
 1036 by law. Any person who acts reasonably, in good faith, and

1037 without negligence in compliance with ~~the provisions of~~ this
 1038 part is immune from civil or criminal liability for his or her
 1039 actions in connection with the preparation or execution of
 1040 petitions, applications, certificates, reports, or other
 1041 documents initiating admission to a facility or the
 1042 apprehension, detention, transportation, examination, admission,
 1043 diagnosis, treatment, or discharge of an individual ~~a patient~~ to
 1044 or from a facility. ~~However, this section does not relieve any~~
 1045 ~~person from liability if such person commits negligence.~~

1046 (11) RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE
 1047 PLANNING.—An individual held for examination or admitted for
 1048 mental health treatment ~~The patient~~ shall have the opportunity
 1049 to participate in treatment and discharge planning and shall be
 1050 notified in writing of his or her right, upon discharge from the
 1051 facility, to seek treatment from the professional or agency of
 1052 the individual's ~~patient's~~ choice.

1053 (12) ADVANCE DIRECTIVES.—All receiving and treatment
 1054 facilities and other service providers shall provide information
 1055 concerning advance directives and assist individuals who are
 1056 competent and willing to complete an advance directive. The
 1057 directive may include instructions regarding mental health care.
 1058 Receiving and treatment facilities and service providers must
 1059 honor the advance directive of an individual admitted to or
 1060 served by the facility or provider.

1061 (13) ~~(12)~~ POSTING OF NOTICE OF RIGHTS OF PATIENTS.—Each
 1062 facility shall post a notice, which lists and describes in
 1063 ~~listing and describing,~~ in the language and terminology that the
 1064 individual ~~persons to whom the notice is addressed~~ can

HB 1213

2010

1065 understand, of the rights provided under ~~in~~ this section. This
 1066 notice must ~~shall~~ include a statement that provisions of the
 1067 federal Americans with Disabilities Act apply and the name and
 1068 telephone number of a person to contact for further information.
 1069 The ~~This~~ notice must ~~shall~~ be posted in a place readily
 1070 accessible to ~~patients~~ and in a format easily seen by the
 1071 individuals served ~~patients~~. The ~~This~~ notice must ~~shall~~ include
 1072 the telephone numbers of the Florida local advocacy council and
 1073 Advocacy Center for Persons with Disabilities, Inc.

1074 Section 9. Subsections (1), (2), (3), and (4) of section
 1075 394.4593, Florida Statutes, are amended to read:

1076 394.4593 Sexual misconduct prohibited; reporting required;
 1077 penalties.—

1078 (1) As used in this section, the term:

1079 (a) "Employee" includes any paid staff member, volunteer,
 1080 or intern of the department; any person under contract with the
 1081 department; and any person providing care or support to an
 1082 individual ~~a client~~ on behalf of the department or its service
 1083 providers.

1084 (b) "Sexual activity" means:

1085 1. Fondling the genital area, groin, inner thighs,
 1086 buttocks, or breasts of an individual ~~a person~~.

1087 2. The oral, anal, or vaginal penetration by or union with
 1088 the sexual organ of another or the anal or vaginal penetration
 1089 of another by any other object.

1090 3. Intentionally touching in a lewd or lascivious manner
 1091 the breasts, genitals, the genital area, or buttocks, or the
 1092 clothing covering them, of an individual ~~a person~~, or forcing or

HB 1213

2010

1093 enticing an individual ~~a person~~ to touch the perpetrator.

1094 4. Intentionally masturbating in the presence of another
1095 person.

1096 5. Intentionally exposing the genitals in a lewd or
1097 lascivious manner in the presence of another individual ~~person~~.

1098 6. Intentionally committing any other sexual act that does
1099 not involve actual physical or sexual contact with another
1100 individual ~~the victim~~, including, but not limited to,
1101 sadomasochistic abuse, sexual bestiality, or the simulation of
1102 any act involving sexual activity in the presence of the
1103 individual ~~a victim~~.

1104 (c) "Sexual misconduct" means any sexual activity between
1105 an employee and an individual held for examination or admitted
1106 for mental health treatment ~~a patient~~, regardless of the consent
1107 of that individual ~~the patient~~. The term does not include an act
1108 done for a bona fide medical purpose or an internal search
1109 conducted in the lawful performance of duty by an employee.

1110 (2) An employee who engages in sexual misconduct with an
1111 individual ~~a patient~~ who:

1112 (a) Is in the custody of the department; or

1113 (b) Resides in a receiving facility or a treatment
1114 facility, ~~as those terms are defined in s. 394.455,~~

1115
1116 commits a felony of the second degree, punishable as provided in
1117 s. 775.082, s. 775.083, or s. 775.084. An employee may be found
1118 guilty of violating this subsection without having committed the
1119 crime of sexual battery.

1120 (3) The consent of an individual held for examination or

HB 1213

2010

1121 admitted for treatment ~~the patient~~ to the sexual activity is not
 1122 a defense to prosecution under this section.

1123 (4) This section does not apply to an employee who:

1124 (a) Is legally married to the individual ~~patient~~; or

1125 (b) Has no reason to believe that the person with whom the
 1126 employee engaged in sexual misconduct is an individual ~~a patient~~
 1127 receiving services as described in subsection (2).

1128 Section 10. Section 394.4595, Florida Statutes, is amended
 1129 to read:

1130 394.4595 Florida statewide and local advocacy councils;
 1131 ~~access to patients and records.~~ Any facility designated by the
 1132 department as a receiving or treatment facility must allow
 1133 access to any individual held for examination or admitted for
 1134 mental health treatment ~~patient~~ and his or her ~~the~~ clinical and
 1135 legal records ~~of any patient admitted pursuant to the provisions~~
 1136 ~~of this act~~ by members of the Florida statewide and local
 1137 advocacy councils.

1138 Section 11. Section 394.4597, Florida Statutes, is amended
 1139 to read:

1140 394.4597 Persons to be notified; appointment of a
 1141 ~~patient's~~ representative.—

1142 (1) VOLUNTARY ADMISSION ~~PATIENTS~~.—At the time an
 1143 individual ~~a patient~~ is voluntarily admitted to a receiving or
 1144 treatment facility, the identity and contact information of the
 1145 a person to be notified in case of an emergency shall be entered
 1146 in the ~~patient's~~ clinical record.

1147 (2) INVOLUNTARY ADMISSION ~~PATIENTS~~.—

1148 ~~(a)~~ At the time an individual ~~a patient~~ is admitted to a

HB 1213

2010

1149 facility for involuntary examination or placement, or when a
 1150 petition for involuntary placement is filed, the names,
 1151 addresses, and telephone numbers of the individual's ~~patient's~~
 1152 guardian or guardian advocate, or representative if he or she
 1153 ~~the patient~~ has no guardian or guardian advocate, health care
 1154 surrogate, and ~~the patient's~~ attorney shall be entered in the
 1155 ~~patient's~~ clinical record.

1156 ~~(a)-(b)~~ If the individual ~~patient~~ has no guardian or
 1157 guardian advocate, he or she ~~the patient~~ shall be asked to
 1158 designate a representative. If the individual ~~patient~~ is unable
 1159 or unwilling to designate a representative, the facility shall
 1160 select a representative.

1161 ~~(b)-(c)~~ The individual ~~patient~~ shall be consulted with
 1162 regard to the selection of a representative by the receiving or
 1163 treatment facility and may ~~shall have authority to~~ request that
 1164 the any such representative be replaced.

1165 ~~(c)-(d)~~ If ~~When~~ the receiving or treatment facility selects
 1166 a representative, first preference shall be given to a health
 1167 care surrogate, if one has been previously selected ~~by the~~
 1168 ~~patient~~. If the individual ~~patient~~ has not previously selected a
 1169 health care surrogate, the selection, except for good cause
 1170 documented in the ~~patient's~~ clinical record, shall be made from
 1171 the following list in the order of listing:

- 1172 1. The individual's ~~patient's~~ spouse.
- 1173 2. An adult child of the individual ~~patient~~.
- 1174 3. A parent of the individual ~~patient~~.
- 1175 4. The adult next of kin of the individual ~~patient~~.
- 1176 5. An adult friend of the individual ~~patient~~.

HB 1213

2010

1177 6. The appropriate Florida local advocacy council as
1178 provided in s. 402.166.

1179 ~~(d)(e)~~ A licensed professional providing services to the
1180 individual patient under this part, an employee of a facility
1181 providing direct services to the individual patient under this
1182 part, a department employee, a person providing other
1183 substantial services to the individual patient in a professional
1184 or business capacity, or a creditor of the individual may
1185 ~~patient shall~~ not be appointed as the ~~patient's~~ representative.

1186 (e) The representative selected by the individual or
1187 designated by the facility has the right, authority, and
1188 responsibility to:

- 1189 1. Receive notice of the individual's admission;
- 1190 2. Receive notice of proceedings affecting the individual;
- 1191 3. Have immediate access to the individual unless such
1192 access is documented to be detrimental to the individual;
- 1193 4. Receive notice of any restriction of the individual's
1194 right to communicate or receive visitors;
- 1195 5. Receive a copy of the inventory of personal effects
1196 upon the individual's admission and to request an amendment to
1197 the inventory at any time;
- 1198 6. Receive disposition of the individual's clothing and
1199 personal effects if not returned to the individual, or to
1200 approve an alternate plan;
- 1201 7. Petition on behalf of the individual for a writ of
1202 habeas corpus to question the cause and legality of the
1203 individual's detention or to allege that the individual is being
1204 unjustly denied a right or privilege granted under this section,

HB 1213

2010

1205 or that a procedure authorized under this section is being
 1206 abused;

1207 8. Apply for a change of venue for the individual's
 1208 involuntary placement hearing for the convenience of the parties
 1209 or witnesses or because of the individual's condition;

1210 9. Receive written notice of any restriction of the
 1211 individual's right to inspect his or her clinical record;

1212 10. Receive notice of the release of the individual from a
 1213 receiving facility where an involuntary examination was
 1214 performed;

1215 11. Receive a copy of any petition for the individual's
 1216 involuntary placement filed with the court; and

1217 12. Be informed by the court of the individual's right to
 1218 an independent expert evaluation pursuant to involuntary
 1219 placement procedures.

1220 Section 12. Section 394.4598, Florida Statutes, is amended
 1221 to read:

1222 394.4598 Guardian advocate.—

1223 (1) The administrator may petition the court for the
 1224 appointment of a guardian advocate based upon the opinion of a
 1225 psychiatrist that an individual held for examination or admitted
 1226 for mental health treatment ~~the patient~~ is incompetent to
 1227 consent to treatment. If the court finds that the individual a
 1228 ~~patient~~ is incompetent to consent to treatment and has not been
 1229 adjudicated incapacitated and a guardian having ~~with the~~
 1230 authority to consent to mental health treatment has not been
 1231 appointed, it shall appoint a guardian advocate. The individual
 1232 ~~patient~~ has the right to have an attorney represent him or her

HB 1213

2010

1233 at the hearing. If the individual ~~person~~ is indigent, the court
 1234 shall appoint the office of the public defender to represent him
 1235 or her at the hearing. The individual ~~patient~~ has the right to
 1236 testify, cross-examine witnesses, and present witnesses. The
 1237 proceeding must ~~shall~~ be recorded ~~either~~ electronically or
 1238 stenographically, and testimony shall be ~~provided~~ under oath.
 1239 One of the professionals authorized to give an opinion in
 1240 support of a petition for involuntary placement, as described in
 1241 s. 394.4655 or s. 394.467, must testify. The ~~A~~ guardian advocate
 1242 must meet the qualifications of a guardian pursuant to ~~contained~~
 1243 ~~in~~ part IV of chapter 744., ~~except that~~ A professional providing
 1244 services to the individual under ~~referred to in~~ this part, an
 1245 employee of the facility providing direct services to the
 1246 individual ~~patient under this part~~, a departmental employee, a
 1247 facility administrator, or a member of the Florida local
 1248 advocacy council may ~~shall~~ not be appointed. A person who is
 1249 appointed as a guardian advocate must agree to the appointment.

1250 (2) A facility requesting appointment of a guardian
 1251 advocate must, prior to the appointment, provide the prospective
 1252 guardian advocate with information concerning ~~about~~ the duties
 1253 and responsibilities of guardian advocates, including ~~the~~
 1254 information about the ethics of medical decisionmaking. Before
 1255 asking a guardian advocate to give consent to treatment for an
 1256 individual held for examination or admitted for mental health
 1257 treatment ~~a patient~~, the facility must ~~shall~~ provide ~~to the~~
 1258 ~~guardian advocate~~ sufficient information so that the guardian
 1259 advocate can decide whether to give express and informed consent
 1260 to the treatment, including information that the treatment is

HB 1213

2010

1261 essential to the care of the individual patient, and that the
 1262 treatment does not present an unreasonable risk of serious,
 1263 hazardous, or irreversible side effects. Before giving consent
 1264 to treatment, the guardian advocate must meet and talk with the
 1265 individual patient and the individual's patient's physician
 1266 face-to-face in person, if ~~at all~~ possible, and by telephone, if
 1267 not. The guardian advocate shall make every effort to make the
 1268 mental health care decision that he or she believes the
 1269 individual would have made under the circumstances if the
 1270 individual were capable of making such decision. The decision of
 1271 the guardian advocate may be reviewed by the court, upon
 1272 petition of the individual's patient's attorney ~~or, the~~
 1273 ~~patient's~~ family, or the facility administrator.

1274 (3) ~~Before~~ Prior to a guardian advocate may exercise
 1275 ~~exercising~~ his or her authority, the guardian advocate must
 1276 complete ~~shall attend~~ a training course approved by the court.
 1277 ~~The~~ This training course, of not less than 4 hours, must
 1278 include, at minimum, information concerning individual ~~about the~~
 1279 ~~patient~~ rights, psychotropic medications, diagnosis of mental
 1280 illness, the ethics of medical decisionmaking, and duties of
 1281 guardian advocates. This training course shall take the place of
 1282 the training required for guardians appointed under ~~pursuant to~~
 1283 chapter 744.

1284 (4) The information provided ~~to be supplied~~ to prospective
 1285 guardian advocates before ~~prior to~~ their appointment and the
 1286 training course for guardian advocates must be developed and
 1287 completed through a course developed by the department and
 1288 approved by the chief judge of the circuit court ~~and taught by a~~

1289 ~~court-approved organization. Court-approved organizations may~~
 1290 ~~include, but are not limited to, community or junior colleges,~~
 1291 ~~guardianship organizations, and the local bar association or The~~
 1292 ~~Florida Bar. The court may, in its discretion, waive some or all~~
 1293 of the training requirements for guardian advocates or impose
 1294 additional requirements. The court shall make its decision on a
 1295 case-by-case basis and, in making its decision, shall consider
 1296 the experience and education of the guardian advocate, the
 1297 duties assigned to the guardian advocate, and the needs of the
 1298 individual whom the guardian advocate represents ~~patient~~.

1299 (5) In selecting a guardian advocate, the court shall give
 1300 preference to a health care surrogate, if one has already been
 1301 designated by the individual held for examination or admitted
 1302 for mental health treatment ~~patient~~. If the individual ~~patient~~
 1303 has not previously selected a health care surrogate, except for
 1304 good cause documented in the court record, the selection shall
 1305 be made from the following list in the order of listing:

- 1306 (a) The individual's ~~patient's~~ spouse.
- 1307 (b) An adult child of the individual ~~patient~~.
- 1308 (c) A parent of the individual ~~patient~~.
- 1309 (d) The adult next of kin of the individual ~~patient~~.
- 1310 (e) An adult friend of the individual ~~patient~~.
- 1311 (f) An adult trained and willing to serve as guardian
 1312 advocate for the individual ~~patient~~.

1313 (6) If a guardian having ~~with the~~ authority to consent to
 1314 medical treatment has not already been appointed, or if the
 1315 individual held for examination or admitted for mental health
 1316 treatment ~~patient~~ has not already designated a health care

HB 1213

2010

1317 surrogate, the court may authorize the guardian advocate to
 1318 consent to medical treatment, as well as mental health
 1319 treatment. Unless otherwise limited by the court, a guardian
 1320 advocate that has ~~with~~ authority to consent to medical treatment
 1321 shall have the same authority to make health care decisions and
 1322 be subject to the same restrictions as a proxy appointed under
 1323 part IV of chapter 765. Unless the guardian advocate has sought
 1324 and received express court approval ~~in proceeding separate from~~
 1325 ~~the proceeding to determine the competence of the patient to~~
 1326 ~~consent to medical treatment~~, the guardian advocate may not
 1327 consent to:

- 1328 (a) Abortion.
- 1329 (b) Sterilization.
- 1330 (c) Electroconvulsive treatment.
- 1331 (d) Psychosurgery.
- 1332 (e) Experimental treatments that have not been approved by
 1333 a federally approved institutional review board in accordance
 1334 with 45 C.F.R. part 46 or 21 C.F.R. part 56.

1335
 1336 The court shall ~~must~~ base its decision on evidence that the
 1337 treatment or procedure is essential to the care of the
 1338 individual ~~patient~~ and that the treatment does not present an
 1339 unreasonable risk of serious, hazardous, or irreversible side
 1340 effects. The court shall follow the procedures set forth in
 1341 subsection (1) of this section.

1342 (7) The guardian advocate shall be discharged when the
 1343 individual whom he or she represents ~~patient~~ is discharged from
 1344 an order for involuntary outpatient ~~placement~~ or ~~involuntary~~

HB 1213

2010

1345 inpatient placement or when the individual ~~patient~~ is
 1346 transferred from involuntary to voluntary status. The court ~~or a~~
 1347 ~~hearing officer~~ shall consider the competence of the individual
 1348 ~~patient~~ pursuant to subsection (1) and may consider an
 1349 involuntarily placed individual's ~~patient's~~ competence to
 1350 consent to treatment at any hearing. Upon sufficient evidence,
 1351 the court may restore, or the magistrate ~~hearing officer~~ may
 1352 recommend that the court restore, the individual's ~~patient's~~
 1353 competence. A copy of the order restoring competence or the
 1354 certificate of discharge containing the restoration of
 1355 competence shall be provided to the individual ~~patient~~ and the
 1356 guardian advocate.

1357 Section 13. Section 394.4599, Florida Statutes, is amended
 1358 to read:

1359 394.4599 Notice.—

1360 (1) VOLUNTARY ADMISSION PATIENTS.—Notice of an
 1361 individual's ~~a~~ voluntary ~~patient's~~ admission shall ~~only~~ be given
 1362 only at the individual's request ~~of the patient~~, except that in
 1363 an emergency, notice shall be given as determined by the
 1364 facility.

1365 (2) INVOLUNTARY ADMISSION PATIENTS.—

1366 (a) If notice of involuntary admission ~~Whenever notice~~ is
 1367 required to be given ~~under this part~~, such notice shall be given
 1368 to the individual admitted ~~patient~~ and his or her ~~the patient's~~
 1369 guardian, guardian advocate, attorney, and representative.

1370 1. If ~~When~~ notice is required to be given to an individual
 1371 ~~a patient~~, it shall be given both orally and in writing, in the
 1372 language and terminology that the individual ~~patient~~ can

HB 1213

2010

1373 understand, and, if needed, the facility shall provide an
 1374 interpreter for the individual ~~patient~~.

1375 2. Notice to an individual's ~~a patient's~~ guardian,
 1376 guardian advocate, health care surrogate or proxy, attorney, and
 1377 representative shall be given by ~~United States mail and by~~
 1378 ~~registered or certified~~ mail with the receipts attached to the
 1379 ~~patient's~~ clinical record. Hand delivery by a facility employee
 1380 may be used as an alternative, with delivery documented in the
 1381 clinical record. If notice is given by a state attorney or an
 1382 attorney for the department, a certificate of service is ~~shall~~
 1383 ~~be~~ sufficient to document service.

1384 (b) A receiving facility shall give prompt notice of the
 1385 whereabouts of an individual ~~a patient~~ who is being
 1386 involuntarily held for examination to the individual's guardian
 1387 or representative, by telephone or in person within 24 hours
 1388 after the individual's ~~patient's~~ arrival at the facility, ~~unless~~
 1389 ~~the patient requests that no notification be made~~. Contact
 1390 attempts must ~~shall~~ be documented in the individual's ~~patient's~~
 1391 clinical record and shall begin as soon as reasonably possible
 1392 after the individual's ~~patient's~~ arrival. Notice that an
 1393 individual is being involuntarily held must ~~a patient is being~~
 1394 ~~admitted as an involuntary patient~~ shall be given to the Florida
 1395 local advocacy council by ~~no later than~~ the next working day
 1396 after the individual ~~patient~~ is admitted.

1397 (c) The written notice of the filing of the petition for
 1398 the involuntary placement of an individual being held must
 1399 include ~~contain~~ the following:

1400 1. Notice that the petition has been filed with the

HB 1213

2010

1401 circuit court in the county in which the individual ~~patient~~ is
 1402 hospitalized and the court's address ~~of such court~~.

1403 2. Notice that the office of the public defender has been
 1404 appointed to represent the individual ~~patient~~ in the proceeding,
 1405 if the individual ~~patient~~ is not otherwise represented by
 1406 counsel.

1407 3. The date, time, and place of the hearing and the name
 1408 of each examining expert and every other person expected to
 1409 testify in support of continued detention.

1410 4. Notice that the individual ~~patient~~, the individual's
 1411 ~~patient's~~ guardian or representative, or the administrator may
 1412 apply for a change of venue for the convenience of the parties
 1413 or witnesses or because of the individual's condition ~~of the~~
 1414 ~~patient~~.

1415 5. Notice that the individual ~~patient~~ is entitled to an
 1416 independent expert examination and, if the individual ~~patient~~
 1417 cannot afford such ~~an~~ examination, that the court will provide
 1418 for one.

1419 (d) A treatment facility shall provide notice of an
 1420 individual's ~~a patient's~~ involuntary admission on the next
 1421 regular working day after the individual's ~~patient's~~ arrival at
 1422 the facility.

1423 (e) If an individual ~~When a patient~~ is to be transferred
 1424 from one facility to another, notice shall be given by the
 1425 facility where the individual ~~patient~~ is located before ~~prior to~~
 1426 the transfer.

1427 Section 14. Section 394.460, Florida Statutes, is
 1428 repealed.

HB 1213

2010

1429 Section 15. Section 394.461, Florida Statutes, is amended
 1430 to read:

1431 394.461 Designation of receiving and treatment
 1432 facilities.—The department may ~~is authorized to~~ designate and
 1433 monitor receiving facilities and treatment facilities and may
 1434 suspend or withdraw such designation for failure to comply with
 1435 this part and rules adopted under this part. Only governmental
 1436 facilities, and other facilities ~~Unless~~ designated by the
 1437 department, may ~~facilities are not permitted to~~ hold or treat
 1438 individuals on an involuntary basis ~~patients under this part.~~

1439 (1) RECEIVING FACILITY.—The department may designate any
 1440 ~~community facility as a receiving facility. Any other facility~~
 1441 ~~within the state, including a private facility, as a receiving~~
 1442 ~~facility if or a federal facility, may be so designated by the~~
 1443 ~~department, provided that~~ such designation is agreed to by the
 1444 governing body or authority of the facility.

1445 (2) TREATMENT FACILITY.—The department may designate any
 1446 state-owned, state-operated, or state-supported facility as a
 1447 state treatment facility. An individual may ~~A civil patient~~
 1448 ~~shall~~ not be admitted to a civil state treatment facility
 1449 without previously undergoing a transfer evaluation. Before a
 1450 court hearing for involuntary placement in a state treatment
 1451 facility, the court shall receive and consider the information
 1452 documented in the transfer evaluation. Any other facility,
 1453 including a private facility or a federal facility, may be
 1454 designated as a treatment facility by the department if
 1455 ~~provided that~~ such designation is agreed to by the appropriate
 1456 governing body or authority of the facility.

1457 (3) GOVERNMENTAL FACILITIES.—Governmental facilities may
 1458 provide voluntary and involuntary mental health examination and
 1459 treatment for individuals in their care and custody and must
 1460 protect the rights of these individuals, pursuant to this part.

1461 (4)-(3) PRIVATE FACILITIES.—Private facilities designated
 1462 as receiving and treatment facilities by the department may
 1463 provide examination and treatment of individuals on an ~~of~~
 1464 involuntary or patients, ~~as well as~~ voluntary basis patients,
 1465 and are subject to all the provisions of this part.

1466 (5)-(4) REPORT.—

1467 (a) A facility designated as a ~~public~~ receiving or
 1468 treatment facility under this section shall annually report ~~to~~
 1469 ~~the department on an annual basis~~ the following data to the
 1470 department, unless such ~~these~~ data are currently being submitted
 1471 to the Agency for Health Care Administration:

- 1472 1. Number of licensed beds by payor class.
- 1473 2. Number of contract days by payor class.
- 1474 3. Number of persons served ~~admissions~~ by payor class and
 1475 diagnoses.
- 1476 4. Number of bed days by payor class.
- 1477 5. Average length of stay by payor class.
- 1478 6. Total revenues by payor class.

1479 (b) For the purposes of this subsection, "payor class"
 1480 means Medicare, Medicare HMO, Medicaid, Medicaid HMO, private-
 1481 pay health insurance, private-pay health maintenance
 1482 organization, private preferred provider organization, the
 1483 Department of Children and Family Services, other government
 1484 programs, self-pay individuals ~~patients~~, and charity care.

1485 (c) The data required under this subsection shall be
 1486 submitted to the department within ~~no later than~~ 90 days after
 1487 ~~following~~ the end of the facility's fiscal year. ~~A facility~~
 1488 ~~designated as a public receiving or treatment facility shall~~
 1489 ~~submit its initial report for the 6-month period ending June 30,~~
 1490 ~~2008.~~

1491 (d) The department shall issue an annual report based on
 1492 the data collected ~~required~~ pursuant to this subsection, which
 1493 must. ~~The report shall include individual facilities' data by~~
 1494 facility, as well as statewide totals. The report shall be
 1495 submitted to the Governor, the President of the Senate, and the
 1496 Speaker of the House of Representatives.

1497 ~~(6)~~⁽⁵⁾ RULES.—The department shall adopt rules relating
 1498 to:

1499 (a) Procedures and criteria for receiving and evaluating
 1500 ~~facility~~ applications for designation as a receiving or
 1501 treatment facility, which may include an onsite facility
 1502 inspection and evaluation of an applicant's licensing status and
 1503 performance history, as well as consideration of local service
 1504 needs.

1505 (b) Minimum standards consistent with this part which ~~that~~
 1506 a facility must meet and maintain in order to be designated as a
 1507 receiving or treatment facility, and procedures for monitoring
 1508 ~~continued~~ adherence to such standards.

1509 (c) Procedures for receiving complaints against a
 1510 designated facility and for initiating inspections and
 1511 investigations of facilities alleged to have violated the
 1512 provisions of this part or rules adopted under this part.

1513 (d) Procedures and criteria for the suspension or
 1514 withdrawal of designation as a receiving or treatment facility.
 1515 Section 16. Section 394.4615, Florida Statutes, is amended
 1516 to read:
 1517 394.4615 Clinical records; confidentiality.—
 1518 (1) A clinical record shall be maintained for each
 1519 individual held for examination or admitted for mental health
 1520 treatment patient. The record must ~~shall~~ include data pertaining
 1521 to admission and such other information as may be required under
 1522 rules of the department. A clinical record is confidential and
 1523 exempt from ~~the provisions of~~ s. 119.07(1). Unless waived by the
 1524 express and informed consent of the individual, by the patient
 1525 or by his or her the patient's guardian, or guardian advocate,
 1526 health care surrogate or proxy, or, if ~~the patient is~~ deceased,
 1527 by his or her the patient's personal representative or the
 1528 family member who stands next in line of intestate succession,
 1529 the confidential status of the clinical record is ~~shall~~ not be
 1530 lost by ~~either~~ authorized or unauthorized disclosure to any
 1531 person, organization, or agency.
 1532 (2) The clinical record of an individual held for
 1533 examination or admitted for mental health treatment shall be
 1534 released if ~~when~~:
 1535 (a) The individual patient or the individual's patient's
 1536 guardian, guardian advocate, or health care surrogate or proxy
 1537 authorizes the release. The guardian, ~~or~~ guardian advocate, or
 1538 surrogate shall be provided access to the appropriate clinical
 1539 records ~~of the patient.~~ The individual patient or the
 1540 individual's patient's guardian, ~~or~~ guardian advocate, or

1541 surrogate or proxy may authorize the release of information and
 1542 clinical records to appropriate persons to ensure the continuity
 1543 of the individual's ~~patient's~~ health care or mental health care.

1544 (b) The individual ~~patient~~ is represented by counsel and
 1545 the records are needed by such ~~the patient's~~ counsel for
 1546 adequate representation.

1547 (c) A petition for involuntary placement is filed and the
 1548 records are needed by the state attorney to evaluate and confirm
 1549 the allegations set forth in the petition or to prosecute the
 1550 petition.

1551 ~~(d)-(e)~~ The court orders such release. In determining
 1552 whether there is good cause for disclosure, the court shall
 1553 weigh the need for the information to be disclosed against the
 1554 possible harm of disclosure to the individual ~~person~~ to whom
 1555 such information pertains.

1556 ~~(e)-(d)~~ The individual ~~patient~~ is committed to, or ~~is to be~~
 1557 returned to, the Department of Corrections ~~from the Department~~
 1558 ~~of Children and Family Services,~~ and the Department of
 1559 Corrections requests such records. The ~~These~~ records shall be
 1560 furnished without charge to the Department of Corrections.

1561 (3) Information from the clinical record may be released
 1562 if in the following circumstances:

1563 (a) The individual ~~When a patient~~ has declared an
 1564 intention to harm other persons. If ~~When~~ such declaration has
 1565 been made, the administrator may authorize the release of
 1566 sufficient information to provide adequate warning to the person
 1567 threatened with harm ~~by the patient.~~

1568 (b) ~~When~~ The administrator of the facility or secretary of

HB 1213

2010

1569 the department deems that release to a qualified researcher as
1570 defined in administrative rule, an aftercare treatment provider,
1571 or an employee or agent of the department is necessary for
1572 treatment of the individual patient, maintenance of adequate
1573 records, compilation of treatment data, aftercare planning, or
1574 evaluation of programs.

1575 (c) The information is necessary for the purpose of
1576 determining whether an individual ~~a person~~ meets the criteria
1577 for involuntary outpatient placement or for preparing the
1578 proposed treatment plan pursuant to s. 394.4655, the clinical
1579 record may be released to the state attorney, the public
1580 defender or the individual's patient's private legal counsel,
1581 the court, and to the appropriate mental health professionals,
1582 including the service provider identified in s. 394.4655(6)(b)
1583 ~~394.4655(6)(b)2.~~, in accordance with state and federal law.

1584 (4) Information from clinical records may be used for
1585 statistical and research purposes if the information is
1586 abstracted in such a way as to protect the identity of
1587 individuals served and meets department policy.

1588 (5) Information from clinical records may be used by the
1589 Agency for Health Care Administration, the department, and the
1590 Florida advocacy councils for the purpose of monitoring facility
1591 activity and complaints concerning facilities.

1592 (6) Clinical records relating to a Medicaid recipient
1593 shall be furnished to the Medicaid Fraud Control Unit in the
1594 Department of Legal Affairs, upon request.

1595 (7) Any person, agency, or entity receiving information
1596 pursuant to this section shall maintain such information as

1597 confidential and exempt from ~~the provisions of~~ s. 119.07(1).

1598 (8) Any facility or private mental health practitioner who
 1599 acts in good faith in releasing information pursuant to this
 1600 section is not subject to civil or criminal liability for such
 1601 release.

1602 (9) ~~Nothing in~~ This section does not ~~is intended to~~
 1603 prohibit the parent or next of kin of an individual ~~a person~~ who
 1604 is held for examination ~~in~~ or admitted for ~~treated under a~~
 1605 mental health treatment facility or program from requesting and
 1606 receiving information limited to a summary of that individual's
 1607 ~~person's~~ treatment plan and current physical and mental
 1608 condition. Release of such information must ~~shall~~ be in
 1609 accordance with the code of ethics of the profession involved.

1610 (10) An adult individual ~~Patients~~ shall have reasonable
 1611 access to his or her ~~their~~ clinical records, unless such access
 1612 is determined by the individual's ~~patient's~~ physician to be
 1613 harmful to the individual ~~patient~~. If the individual's ~~patient's~~
 1614 right to inspect his or her clinical record is restricted by the
 1615 facility, written notice of the ~~such~~ restriction must ~~shall~~ be
 1616 given to the individual ~~patient~~ and to his or her ~~the patient's~~
 1617 guardian, guardian advocate, attorney, and representative. In
 1618 addition, the restriction must ~~shall~~ be recorded in the clinical
 1619 record, together with the reasons for it. The restriction
 1620 expires ~~of a patient's right to inspect his or her clinical~~
 1621 ~~record shall expire~~ after 7 days but may be renewed, after
 1622 review, for subsequent 7-day periods.

1623 (11) Any person who fraudulently alters, defaces, or
 1624 falsifies the clinical record of an individual ~~any person~~

HB 1213

2010

1625 receiving mental health services in a facility subject to this
 1626 part, or causes or procures any of these offenses to be
 1627 committed, commits a misdemeanor of the second degree,
 1628 punishable as provided in s. 775.082 or s. 775.083.

1629 Section 17. Section 394.462, Florida Statutes, is amended
 1630 to read:

1631 394.462 Transportation.—

1632 (1) TRANSPORTATION TO A RECEIVING FACILITY.—

1633 (a) Each county shall designate a single law enforcement
 1634 agency within the county, or portions thereof, to take an
 1635 individual ~~a person~~ into custody upon the entry of an ex parte
 1636 order or the execution of a certificate for involuntary
 1637 examination by an authorized professional and to transport that
 1638 individual ~~person~~ to the nearest receiving facility, excluding a
 1639 governmental facility, for examination. A law enforcement
 1640 officer acting in good faith pursuant to this part may not be
 1641 held criminally or civilly liable for false imprisonment. The
 1642 designated law enforcement agency may decline to transport the
 1643 individual ~~person~~ to a receiving facility only if:

1644 1. The county or jurisdiction designated by the county has
 1645 contracted ~~on an annual basis~~ with an emergency medical
 1646 transport service or private transport company for
 1647 transportation of individuals ~~persons~~ to receiving facilities
 1648 ~~pursuant to this section~~ at the sole cost of the county; and

1649 2. The law enforcement agency and the emergency medical
 1650 transport service or private transport company agree that the
 1651 continued presence of law enforcement personnel is not necessary
 1652 for the safety of the individual being transported ~~person~~ or

HB 1213

2010

1653 others.

1654 ~~(b)3.~~ If transportation for involuntary examination is
 1655 provided by an emergency medical transport service or private
 1656 transport company, the county or law enforcement agency ~~The~~
 1657 ~~jurisdiction~~ designated by the county may seek reimbursement for
 1658 transportation expenses. The individual being transported is
 1659 ~~party~~ responsible for payment ~~for such transportation is the~~
 1660 ~~person receiving the transportation.~~ The county shall seek
 1661 reimbursement from the following sources in the following order:

1662 1.a. From an insurance company, health care corporation,
 1663 or other source, if the individual being transported ~~person~~
 1664 ~~receiving the transportation~~ is covered by an insurance policy
 1665 or subscribes to a health care corporation or other source for
 1666 payment of such expenses.

1667 2.b. From the individual being transported ~~person~~
 1668 ~~receiving the transportation.~~

1669 3.e. From a financial settlement for medical care,
 1670 treatment, hospitalization, or transportation payable or
 1671 accruing to the injured party.

1672 ~~(c)(b)~~ Any company that transports an individual ~~a patient~~
 1673 pursuant to this subsection is considered an independent
 1674 contractor and is solely liable for the safe and dignified
 1675 transportation of the individual ~~patient~~. Such company must be
 1676 insured and maintain at least ~~provide no less than~~ \$100,000 in
 1677 liability insurance with respect to such ~~the~~ transportation ~~of~~
 1678 ~~patients.~~

1679 ~~(d)(e)~~ Any company that contracts with a governing board
 1680 of a county to transport individuals for examination or

HB 1213

2010

1681 treatment must ~~patients shall~~ comply with the applicable rules
1682 of the department to ensure their ~~the~~ safety and dignity ~~of the~~
1683 ~~patients~~.

1684 ~~(e)-(d)~~ If ~~When~~ a law enforcement officer takes custody of
1685 an individual ~~a person~~ pursuant to this part, the officer may
1686 request assistance from emergency medical personnel if such
1687 assistance is needed for the safety of the officer or the
1688 individual ~~person~~ in custody.

1689 ~~(f)-(e)~~ If ~~When~~ a member of a mental health overlay program
1690 or a mobile crisis response service who is a professional
1691 authorized to initiate an involuntary examination pursuant to s.
1692 394.463 ~~and that professional~~ evaluates an individual ~~a person~~
1693 and determines that transportation to a receiving facility is
1694 needed, the service, ~~at its discretion,~~ may transport the
1695 individual ~~person~~ to the facility or may call on the law
1696 enforcement agency or other transportation arrangement best
1697 suited to the needs of the individual being transported ~~patient~~.

1698 ~~(g)-(f)~~ If a ~~When any~~ law enforcement officer has custody
1699 of an individual ~~a person~~ based on ~~either~~ noncriminal or minor
1700 criminal behavior that meets the statutory guidelines for
1701 involuntary examination under this part, the law enforcement
1702 officer shall transport the individual ~~person~~ to the nearest
1703 receiving facility for examination.

1704 ~~(h)-(g)~~ If a ~~When any~~ law enforcement officer has arrested
1705 an adult individual ~~a person~~ for a felony and it appears that
1706 the individual ~~person~~ meets the ~~statutory~~ guidelines for
1707 involuntary examination or placement under this part, the
1708 individual ~~such person~~ shall first be processed in the same

HB 1213

2010

1709 manner as any other criminal suspect. The law enforcement agency
1710 shall thereafter immediately notify the nearest public receiving
1711 facility, which shall be responsible for promptly arranging for
1712 the examination and treatment of the individual ~~person~~. A
1713 receiving facility is not required to admit an individual ~~a~~
1714 ~~person~~ charged with a crime for whom the facility determines and
1715 documents that it is unable to provide adequate security, but
1716 shall provide mental health examination and treatment to the
1717 individual ~~person~~ where he or she is held.

1718 (i) ~~(h)~~ If the appropriate law enforcement officer believes
1719 that an individual ~~a person~~ has an emergency medical condition
1720 as defined in s. 395.002, the individual ~~person~~ may be ~~first~~
1721 transported to a hospital for emergency medical treatment,
1722 regardless of whether the hospital is a designated receiving
1723 facility.

1724 (j) ~~(i)~~ The costs of transportation, evaluation,
1725 hospitalization, and treatment incurred under this subsection by
1726 individuals ~~persons~~ who have been arrested for violations of any
1727 state law or county or municipal ordinance may be recovered as
1728 provided in s. 901.35.

1729 (k) ~~(j)~~ The nearest receiving facility must accept
1730 individuals ~~persons~~ brought by law enforcement officers for
1731 involuntary examination.

1732 (l) ~~(k)~~ Each law enforcement agency shall develop a
1733 memorandum of understanding with each receiving facility within
1734 the law enforcement agency's jurisdiction which reflects a
1735 single set of protocols for the safe and secure transportation
1736 of the person and transfer of custody of the person. These

1737 protocols must also address crisis intervention measures.

1738 (m) ~~(l)~~ If ~~When~~ a jurisdiction has entered into a contract
 1739 with an emergency medical transport service or a private
 1740 transport company for transportation of individuals ~~persons~~ to
 1741 receiving facilities, such service or company shall be given
 1742 preference for transportation of individuals ~~persons~~ from
 1743 nursing homes, assisted living facilities, adult day care
 1744 centers, or adult family-care homes, unless the behavior of the
 1745 individual ~~person~~ being transported is such that transportation
 1746 by a law enforcement officer is necessary.

1747 (n) ~~(m)~~ ~~Nothing in~~ This section does not ~~shall be construed~~
 1748 ~~to~~ limit emergency examination and treatment of incapacitated
 1749 individuals ~~persons~~ provided in accordance with ~~the provisions~~
 1750 ~~of~~ s. 401.445.

1751 (2) TRANSPORTATION TO A TREATMENT FACILITY.—

1752 (a) If ~~neither~~ the individual held for examination or
 1753 admitted for mental health treatment or ~~patient nor~~ any person
 1754 legally obligated or responsible for the individual ~~patient~~ is
 1755 not able to pay for the expense of transporting an individual ~~a~~
 1756 ~~voluntary or involuntary patient~~ to a treatment facility, the
 1757 governing board of the county in which the individual ~~patient~~ is
 1758 hospitalized shall arrange for the ~~such~~ required transportation
 1759 and shall ensure the safe and dignified transportation of the
 1760 individual ~~patient~~. The governing board of each county may ~~is~~
 1761 ~~authorized to~~ contract with private transport companies for such
 1762 ~~the transportation of such patients to and from a treatment~~
 1763 ~~facility.~~

1764 (b) Any company that transports an individual ~~a patient~~

1765 pursuant to this subsection is considered an independent
 1766 contractor and is solely liable for the safe and dignified
 1767 transportation of the individual patient. Such company must be
 1768 insured and provide at least ~~no less than~~ \$100,000 in liability
 1769 insurance for such ~~with respect to the~~ transportation of
 1770 ~~patients~~.

1771 (c) Any company that contracts with the governing board of
 1772 a county to transport individuals must ~~patients shall~~ comply
 1773 with the applicable rules of the department to ensure the safety
 1774 and dignity of the individuals transported ~~patients~~.

1775 (d) County or municipal law enforcement and correctional
 1776 personnel and equipment may ~~shall~~ not be used to transport
 1777 individuals ~~patients~~ adjudicated incapacitated or found by the
 1778 court to meet the criteria for involuntary placement under
 1779 ~~pursuant to~~ s. 394.467, except in small rural counties where
 1780 there are no cost-efficient alternatives.

1781 (3) TRANSFER OF CUSTODY.—Custody of a person who is
 1782 transported pursuant to this part, along with related
 1783 documentation, shall be relinquished to a responsible individual
 1784 at the appropriate receiving or treatment facility.

1785 (4) EXCEPTIONS.—

1786 (a) An exception to the requirements of this section may
 1787 be granted by the secretary ~~of the department~~ for the purposes
 1788 of improving service coordination or better meeting the special
 1789 needs of individuals. A proposal for an exception shall ~~must~~ be
 1790 submitted to the secretary by the circuit ~~district~~ administrator
 1791 after being approved by the governing board of each affected
 1792 county ~~boards of any affected counties, prior to submission to~~

HB 1213

2010

1793 ~~the secretary.~~

1794 1.(a) A proposal for an exception must identify the
 1795 specific provision from which an exception is requested,†
 1796 describe how the proposal will be implemented by participating
 1797 law enforcement agencies and transportation authorities,† and
 1798 provide a plan for the coordination of services such as case
 1799 management.

1800 2.(b) ~~An~~ The exception may be granted only for:

1801 a.1. An arrangement centralizing and improving the
 1802 provision of services within a circuit district, which may
 1803 include an exception to the requirement for transportation to
 1804 the nearest receiving facility;

1805 b.2. An arrangement whereby ~~by which~~ a facility may
 1806 provide, in addition to required psychiatric services, an
 1807 environment and services that ~~which~~ are uniquely tailored to the
 1808 needs of an identified group of individuals who have persons
 1809 ~~with~~ special needs, such as persons who have ~~with~~ hearing
 1810 impairments or visual impairments, or elderly persons who have
 1811 ~~with~~ physical frailties; or

1812 c.3. A specialized transportation system that provides an
 1813 efficient and humane method of transporting individuals ~~patients~~
 1814 to receiving facilities, among receiving facilities, and to
 1815 treatment facilities.

1816 2.(e) Any exception approved pursuant to this subsection
 1817 must ~~shall~~ be reviewed and approved every 5 years by the
 1818 secretary.

1819 (b) The Department of Corrections may transport an
 1820 individual who is being released from its custody to a receiving

HB 1213

2010

1821 or treatment facility for involuntary examination or placement.
 1822 Such transport shall be to a facility, specified by the
 1823 department, which is able to meet the specific needs of the
 1824 individual, or, if such specification cannot be made due to
 1825 exigent circumstances, transport may be to the nearest receiving
 1826 facility.

1827 Section 18. Section 394.4625, Florida Statutes, is amended
 1828 to read:

1829 394.4625 Voluntary admissions.—

1830 (1) EXAMINATION AND TREATMENT ~~AUTHORITY TO RECEIVE~~
 1831 ~~PATIENTS.~~—

1832 (a) A facility may receive for observation, diagnosis, or
 1833 treatment an adult who makes any person 18 years of age or older
 1834 ~~making~~ application by express and informed consent for admission
 1835 or any minor person age 17 or under for whom such application is
 1836 made by his or her guardian.

1837 1. If found to show evidence of mental illness, to be
 1838 competent to provide express and informed consent, and to be
 1839 suitable for treatment, an adult ~~such person 18 years of age or~~
 1840 ~~elder~~ may be admitted to the facility.

1841 2. A minor person age 17 or under may be admitted only
 1842 with the minor's assent, which must be obtained in conjunction
 1843 with consent from the minor's guardian. The minor's assent means
 1844 that the minor has affirmatively agreed to stay at the facility
 1845 for examination or mental health treatment. Mere failure to
 1846 object, absent affirmative agreement, is not assent. The minor's
 1847 assent must be verified through a clinical assessment that is
 1848 documented in the clinical record and conducted within 12 hours

1849 after admission by a licensed professional authorized to
 1850 initiate an involuntary examination pursuant to s. 394.463. In
 1851 verifying the minor's assent, the examining professional must
 1852 first provide the minor with an explanation of why the minor
 1853 will be examined and treated, what the minor can expect while in
 1854 the facility, and when the minor may expect to be released,
 1855 using language that is appropriate to the minor's age,
 1856 experience, maturity, and condition. Unless the minor's assent
 1857 is verified pursuant to this section, a petition for involuntary
 1858 inpatient placement must be filed with the court within 1
 1859 working day after admission or the minor must be released to his
 1860 or her guardian within 24 hours after admission ~~only after a~~
 1861 ~~hearing to verify the voluntariness of the consent.~~

1862 (b) A mental health overlay program, ~~or~~ or a mobile crisis
 1863 response service, or a licensed professional who is authorized
 1864 to initiate an involuntary examination pursuant to s. 394.463
 1865 and is employed by a community mental health center or clinic
 1866 must, pursuant to circuit ~~district~~ procedure approved by the
 1867 respective circuit ~~district~~ administrator, conduct an initial
 1868 assessment of the ability of the following individuals ~~persons~~
 1869 to give express and informed consent to treatment before such
 1870 individuals ~~persons~~ may be admitted voluntarily:

1871 1. An individual ~~A person~~ 60 years of age or older for
 1872 whom transfer is being sought from a nursing home, assisted
 1873 living facility, adult day care center, or adult family-care
 1874 home, if ~~when~~ such person has been diagnosed as suffering from
 1875 dementia.

1876 2. An individual ~~A person~~ 60 years of age or older for

HB 1213

2010

1877 | whom transfer is being sought from a nursing home pursuant to s.
 1878 | 400.0255(11) ~~400.0255(12)~~.

1879 | 3. An individual ~~A person~~ for whom all decisions
 1880 | concerning medical treatment are currently being lawfully made
 1881 | by a ~~the~~ health care surrogate or proxy designated under chapter
 1882 | 765.

1883 | (c) If ~~When~~ an initial assessment of the ability of an
 1884 | individual ~~a person~~ to give express and informed consent to
 1885 | treatment is required under this section, and a mobile crisis
 1886 | response service does not respond to a ~~the~~ request for an
 1887 | assessment within 2 hours after the request is made or informs
 1888 | the requesting facility that it will not be able to respond
 1889 | within 2 hours after the request is made, the requesting
 1890 | facility may arrange for assessment by a ~~any~~ licensed
 1891 | professional authorized to initiate an involuntary examination
 1892 | under ~~pursuant to~~ s. 394.463. The professional may not be ~~who is~~
 1893 | ~~not~~ employed by or under contract with, or ~~and does not~~ have a
 1894 | financial interest in, ~~either~~ the facility initiating the
 1895 | transfer or the ~~receiving~~ facility to which the transfer may be
 1896 | made, and may not have a financial interest in the outcome of
 1897 | the assessment.

1898 | (d) A facility may not admit an individual on ~~as a~~
 1899 | voluntary status ~~patient a person~~ who has been adjudicated
 1900 | incapacitated, unless the condition of incapacity has been
 1901 | judicially removed. If a facility admits an individual on
 1902 | voluntary status ~~as a voluntary patient a person~~ who is later
 1903 | determined to have been adjudicated incapacitated, and the
 1904 | condition of incapacity had not been removed by the time of the

HB 1213

2010

1905 admission, the facility must ~~either~~ discharge ~~the patient~~ or
 1906 transfer the individual patient to involuntary status.

1907 (e) The health care surrogate or proxy of an individual on
 1908 a voluntary status patient may not consent to the provision of
 1909 mental health treatment for that individual ~~the patient~~. An
 1910 individual on voluntary status ~~A voluntary patient~~ who is
 1911 unwilling or unable to provide express and informed consent to
 1912 mental health treatment must ~~either~~ be discharged or transferred
 1913 to involuntary status.

1914 (f) Within 24 hours after an individual's voluntary
 1915 admission ~~of a voluntary patient~~, the admitting physician shall
 1916 document in the ~~patient's~~ clinical record that the individual
 1917 ~~patient~~ is able to give express and informed consent for
 1918 admission. If the individual patient is not able to give express
 1919 and informed consent for admission, the facility must ~~shall~~
 1920 ~~either~~ discharge ~~the patient~~ or transfer the individual patient
 1921 to involuntary status pursuant to subsection (5).

1922 (2) RELEASE OR DISCHARGE OF VOLUNTARY PATIENTS. -

1923 (a) A facility shall discharge an individual admitted on a
 1924 voluntary status who patient:

1925 1. ~~Who~~ Has sufficiently improved so that retention in the
 1926 facility is no longer desirable. The individual ~~A patient~~ may
 1927 also be discharged to the care of a community facility.

1928 2. ~~Who~~ Has revoked ~~revokes~~ consent to admission or
 1929 requests discharge. The individual ~~A voluntary patient~~ or his or
 1930 her ~~a~~ relative, friend, or attorney ~~of the patient~~ may request
 1931 discharge ~~either~~ orally or in writing at any time following
 1932 admission to the facility. The individual patient must be

HB 1213

2010

1933 discharged within 24 hours after ~~of~~ the request, unless the
 1934 request is rescinded or the individual patient is transferred to
 1935 involuntary status pursuant to this section. The 24-hour time
 1936 period may be extended by a treatment facility if ~~when~~ necessary
 1937 for adequate discharge planning, but may ~~shall~~ not exceed 3 days
 1938 exclusive of weekends and holidays. If the individual patient,
 1939 or another on his or her ~~the patient's~~ behalf, makes an oral
 1940 request for discharge to a staff member, such request must ~~shall~~
 1941 be immediately entered in the ~~patient's~~ clinical record. If the
 1942 request for discharge is made by a person other than the
 1943 individual patient, the discharge may be conditioned upon the
 1944 individual's express and informed consent ~~of the patient~~.

1945 (b) An individual on A voluntary status patient who has
 1946 been admitted to a facility and who refuses to consent to or
 1947 revokes consent to treatment must ~~shall~~ be discharged within 24
 1948 hours after such refusal or revocation, unless transferred to
 1949 involuntary status pursuant to this section or unless the
 1950 refusal or revocation is freely and voluntarily rescinded by the
 1951 individual patient.

1952 (c) An individual on voluntary status who has been charged
 1953 with a crime shall be returned to the custody of a law
 1954 enforcement officer upon release or discharge from a facility.

1955 (3) NOTICE OF RIGHT TO DISCHARGE.—At the time of admission
 1956 and at least every 6 months thereafter, an individual on a
 1957 voluntary status patient shall be notified in writing of his or
 1958 her right to apply for a discharge.

1959 (4) TRANSFER TO VOLUNTARY STATUS.—An individual on
 1960 involuntary status patient who has been certified by a physician

HB 1213

2010

1961 or psychologist as competent to provide express and informed
 1962 consent and who applies to be transferred to voluntary status
 1963 shall be transferred to voluntary status immediately, unless the
 1964 individual patient ~~has been charged with a crime, or~~ has been
 1965 involuntarily placed for treatment by a court pursuant to s.
 1966 394.467 and continues to meet the criteria for involuntary
 1967 placement. When transfer to voluntary status occurs, notice
 1968 shall be given as provided in s. 394.4599.

1969 (5) TRANSFER TO INVOLUNTARY STATUS.—If an individual on
 1970 ~~When a~~ voluntary status patient, or an authorized person on the
 1971 individual's ~~the patient's~~ behalf, makes a request for
 1972 discharge, the request for discharge, unless freely and
 1973 voluntarily rescinded, must be communicated to a physician,
 1974 clinical psychologist, or psychiatrist as quickly as possible,
 1975 but within ~~not later than~~ 12 hours after the request is made. If
 1976 the individual patient meets the criteria for involuntary
 1977 placement, the administrator of the facility must file with the
 1978 court a petition for involuntary placement, within 2 court
 1979 working days after the request ~~for discharge~~ is made. If the
 1980 petition is not filed within 2 court working days, the
 1981 individual must ~~patient shall~~ be discharged. Pending the filing
 1982 of the petition, the individual patient may be held and
 1983 emergency treatment rendered in the least restrictive manner,
 1984 upon the written order of a physician, if it is determined that
 1985 such treatment is necessary for the safety of the individual
 1986 ~~patient~~ or others.

1987 Section 19. Section 394.463, Florida Statutes, is amended
 1988 to read:

HB 1213

2010

1989 394.463 Involuntary examination.—
 1990 (1) CRITERIA.—An individual ~~A person~~ may be taken to a
 1991 receiving facility for involuntary examination if there is
 1992 reason to believe that he or she ~~the person~~ has a mental illness
 1993 and because of this ~~his or her~~ mental illness:
 1994 (a)1. The individual ~~person~~ has refused voluntary
 1995 examination after conscientious explanation and disclosure of
 1996 the purpose of the examination; or
 1997 2. The individual ~~person~~ is unable to determine for
 1998 himself or herself whether examination is necessary; and
 1999 (b)~~1.~~ Without care or treatment; ~~the person~~
 2000 1. The individual is likely to suffer from neglect or
 2001 refuse to care for himself or herself; such neglect or refusal
 2002 poses a real and present threat of substantial harm to his or
 2003 her well-being; and it is not apparent that such harm may be
 2004 avoided through the help of willing family members or friends or
 2005 the provision of other services; or
 2006 2. There is a substantial likelihood ~~that without care or~~
 2007 ~~treatment~~ the individual ~~person~~ will cause serious bodily harm
 2008 to self ~~himself or herself~~ or others in the near future, as
 2009 evidenced by recent behavior.
 2010 (2) INVOLUNTARY EXAMINATION.—
 2011 (a) An involuntary examination may be initiated by any one
 2012 of the following means:
 2013 1. A court may enter an ex parte order stating that an
 2014 individual ~~a person~~ appears to meet the criteria for involuntary
 2015 examination, giving the findings on which that conclusion is
 2016 based. The ex parte order for involuntary examination must be

HB 1213

2010

2017 based on sworn testimony, written or oral, which includes
 2018 specific facts that support the finding that the criteria have
 2019 been met. Any behavior relied on for the issuance of the ex
 2020 parte order must have occurred within the preceding 14 days. If
 2021 ~~other less restrictive means are not available, such as~~
 2022 ~~voluntary appearance for outpatient evaluation,~~ A law
 2023 enforcement officer, or other designated agent of the court,
 2024 shall take the individual ~~person~~ into custody and deliver him or
 2025 her to the nearest receiving facility for involuntary
 2026 examination. The ~~order of the court~~ order must ~~shall~~ be made a
 2027 part of the ~~patient's~~ clinical record. A ~~No~~ fee may not ~~shall~~ be
 2028 charged for the filing of an order under this subsection. Any
 2029 receiving facility accepting the individual ~~patient~~ based on the
 2030 ~~this~~ order must send a copy of the order to the Agency for
 2031 Health Care Administration on the next working day. The order is
 2032 ~~shall be~~ valid only until the individual is delivered to the
 2033 receiving facility until executed or, if not executed, for the
 2034 period specified in the order itself, whichever occurs first. If
 2035 a ~~no~~ time limit is not specified in the order, the order is
 2036 ~~shall be~~ valid for 7 days after the date it ~~that the order~~ was
 2037 signed.

2038 2. A law enforcement officer shall take an individual ~~a~~
 2039 ~~person~~ who appears to meet the criteria for involuntary
 2040 examination into custody and deliver or arrange for the delivery
 2041 of the individual ~~the person or have him or her delivered~~ to the
 2042 nearest receiving facility for examination. The officer shall
 2043 complete ~~execute~~ a written report detailing the circumstances
 2044 under which the individual ~~person~~ was taken into custody. ~~and~~

HB 1213

2010

2045 The report must ~~shall~~ be made a part of the ~~patient's~~ clinical
 2046 record. Any receiving facility accepting the individual patient
 2047 based on the ~~this~~ report must send a copy of the report to the
 2048 Agency for Health Care Administration on the next working day.

2049 3. A physician, clinical psychologist, psychiatric nurse,
 2050 mental health counselor, marriage and family therapist, ~~or~~
 2051 clinical social worker, or physician assistant may execute a
 2052 certificate stating that he or she has examined the individual ~~a~~
 2053 ~~person~~ within the preceding 48 hours and finds that the
 2054 individual person appears to meet the criteria for involuntary
 2055 examination and stating the observations upon which that
 2056 conclusion is based. ~~If other less restrictive means are not~~
 2057 ~~available, such as voluntary appearance for outpatient~~
 2058 ~~evaluation,~~ A law enforcement officer shall take the individual
 2059 ~~person~~ named in the certificate into custody and deliver him or
 2060 her to the nearest receiving facility for involuntary
 2061 examination. The law enforcement officer shall complete ~~execute~~
 2062 a written report detailing the circumstances under which the
 2063 individual person was taken into custody. The report and
 2064 certificate shall be made a part of the ~~patient's~~ clinical
 2065 record. Any receiving facility accepting the individual patient
 2066 based on the ~~this~~ certificate must send a copy of the
 2067 certificate to the Agency for Health Care Administration on the
 2068 next working day. The certificate is valid only until the
 2069 individual is delivered to the receiving facility or until 7
 2070 calendar days after the certificate was executed, whichever
 2071 occurs first.

2072 (b) A person who initiates an involuntary examination of a

2073 minor shall make and document immediate attempts to notify the
 2074 minor's guardian of such examination. A receiving facility
 2075 accepting a minor for involuntary examination must immediately
 2076 notify the minor's guardian upon the minor's arrival.

2077 (c)(b) An individual may ~~A person shall not be removed~~
 2078 ~~from a any~~ program or residential placement licensed under
 2079 chapter 400 or chapter 429 and transported to a receiving
 2080 facility for involuntary examination unless an ex parte order, a
 2081 professional certificate, or a law enforcement officer's report
 2082 is first prepared. If the condition of the individual ~~person~~ is
 2083 such that preparation of a law enforcement officer's report is
 2084 not practicable before removal, the report must ~~shall~~ be
 2085 completed as soon as possible after removal, but ~~in any case~~
 2086 before the individual ~~person~~ is transported to a receiving
 2087 facility. A receiving facility admitting an individual ~~a person~~
 2088 for involuntary examination who is not accompanied by the
 2089 required ex parte order, professional certificate, or law
 2090 enforcement officer's report must ~~shall~~ notify the Agency for
 2091 Health Care Administration of such admission by certified mail
 2092 by no later than the next working day. ~~The provisions of this~~
 2093 ~~paragraph do not apply when transportation is provided by the~~
 2094 ~~patient's family or guardian.~~

2095 (d)(e) A law enforcement officer acting in accordance with
 2096 an ex parte order issued pursuant to this subsection may serve
 2097 and execute such order on any day of the week, at any time of
 2098 the day or night.

2099 (e)(d) A law enforcement officer acting in accordance with
 2100 an ex parte order issued pursuant to this subsection may use

HB 1213

2010

2101 ~~such~~ reasonable physical force if ~~as is~~ necessary to gain entry
 2102 to the premises, and any dwellings, buildings, or other
 2103 structures located on the premises, and to take custody of the
 2104 individual ~~person~~ who is the subject of the ex parte order.

2105 (f) ~~(e)~~ The Agency for Health Care Administration shall
 2106 receive and maintain the copies of ex parte orders, involuntary
 2107 outpatient placement orders issued pursuant to s. 394.4655,
 2108 involuntary inpatient placement orders issued pursuant to s.
 2109 394.467, professional certificates, and law enforcement
 2110 officers' reports. These documents shall be considered part of
 2111 the clinical record, governed by ~~the provisions of~~ s. 394.4615.
 2112 The agency shall prepare annual reports analyzing the data
 2113 obtained from these documents, without information identifying
 2114 individuals held for examination or admitted for mental health
 2115 treatment patients, and shall provide copies of reports to the
 2116 department, the President of the Senate, the Speaker of the
 2117 House of Representatives, and the minority leaders of the Senate
 2118 and the House of Representatives.

2119 (g) ~~(f)~~ An individual ~~A patient~~ shall be examined by a
 2120 physician or clinical psychologist ~~at a receiving facility~~
 2121 without unnecessary delay to determine if the criteria for
 2122 involuntary inpatient placement is met. Emergency treatment may
 2123 be provided and may, upon the order of a physician, ~~be given~~
 2124 ~~emergency treatment~~ if it is determined that such treatment is
 2125 necessary for the safety of the patient or others. ~~The patient~~
 2126 ~~may not be released by the receiving facility or its contractor~~
 2127 ~~without the documented approval of a psychiatrist, a clinical~~
 2128 ~~psychologist, or, if the receiving facility is a hospital, the~~

HB 1213

2010

2129 ~~release may also be approved by an attending emergency~~
2130 ~~department physician with experience in the diagnosis and~~
2131 ~~treatment of mental and nervous disorders and after completion~~
2132 ~~of an involuntary examination pursuant to this subsection.~~
2133 ~~However, a patient may not be held in a receiving facility for~~
2134 ~~involuntary examination longer than 72 hours.~~

2135 (h) An individual may not be held for involuntary
2136 examination for more than 72 hours. Based on the individual's
2137 needs, one of the following actions must be taken within the 72-
2138 hour period:

2139 1. The individual shall be released after the completion
2140 of the involuntary examination and with the documented approval
2141 of a psychiatrist or a clinical psychologist or, if the facility
2142 is a hospital, the release may be approved by an attending
2143 emergency department physician;

2144 2. The individual shall be asked to give express and
2145 informed consent for voluntary admission if a physician or
2146 clinical psychologist has determined that the individual is
2147 competent to consent to treatment; or

2148 3. A petition for involuntary placement shall be completed
2149 and filed in the circuit court if involuntary outpatient or
2150 inpatient treatment is deemed necessary. If the 72-hour period
2151 ends on a weekend or holiday, the petition must be filed by the
2152 next working day. If inpatient treatment is deemed necessary,
2153 the least restrictive treatment consistent with the optimum
2154 improvement of the individual's condition must be made
2155 available.

2156 (i) An individual released from a receiving or treatment

HB 1213

2010

2157 facility on a voluntary or involuntary basis who is charged with
 2158 a crime shall be returned to the custody of a law enforcement
 2159 officer.

2160 (j)~~(g)~~ If an individual ~~A person~~ for whom an involuntary
 2161 examination has been initiated ~~who~~ is also being evaluated or
 2162 treated at a hospital for an emergency medical condition
 2163 specified in s. 395.002, ~~must be examined by a receiving~~
 2164 ~~facility within 72 hours.~~ the 72-hour period begins when the
 2165 individual patient arrives at the hospital and ceases when the
 2166 attending physician documents that the individual patient has an
 2167 emergency medical condition. The 72-hour period resumes when the
 2168 physician documents that the emergency medical condition has
 2169 stabilized or does not exist. ~~If the patient is examined at a~~
 2170 ~~hospital providing emergency medical services by a professional~~
 2171 ~~qualified to perform an involuntary examination and is found as~~
 2172 ~~a result of that examination not to meet the criteria for~~
 2173 ~~involuntary outpatient placement pursuant to s. 394.4655(1) or~~
 2174 ~~involuntary inpatient placement pursuant to s. 394.467(1), the~~
 2175 ~~patient may be offered voluntary placement, if appropriate, or~~
 2176 ~~released directly from the hospital providing emergency medical~~
 2177 ~~services. The finding by the professional that the patient has~~
 2178 ~~been examined and does not meet the criteria for involuntary~~
 2179 ~~inpatient placement or involuntary outpatient placement must be~~
 2180 ~~entered into the patient's clinical record. Nothing in this~~
 2181 ~~paragraph is intended to prevent~~ A hospital providing emergency
 2182 medical services may transfer an individual from appropriately
 2183 ~~transferring a patient to another hospital~~ before ~~prior to~~
 2184 stabilization if, ~~provided~~ the requirements of s. 395.1041(3)(c)

2185 are ~~have been~~ met.

2186 ~~(h)~~ One of the following must occur within 12 hours after
 2187 the ~~patient's~~ attending physician documents that the
 2188 individual's ~~patient's~~ medical condition has stabilized or that
 2189 an emergency medical condition does not exist:

2190 1. The individual shall be examined by a physician or
 2191 clinical psychologist and, if found not to meet the criteria for
 2192 involuntary examination pursuant to s. 394.463, shall be
 2193 released directly from the hospital providing the emergency
 2194 medical services. The results of the examination, including the
 2195 final disposition, shall be entered into the clinical record; or

2196 2. The individual shall be transferred to a receiving
 2197 facility for examination if appropriate medical and mental
 2198 health treatment is available. However, the receiving facility
 2199 must be notified of the transfer within 2 hours after the
 2200 individual's condition has been stabilized or after
 2201 determination that an emergency medical condition does not
 2202 exist.

2203 ~~1. The patient must be examined by a designated receiving~~
 2204 ~~facility and released; or~~

2205 ~~2. The patient must be transferred to a designated~~
 2206 ~~receiving facility in which appropriate medical treatment is~~
 2207 ~~available. However, the receiving facility must be notified of~~
 2208 ~~the transfer within 2 hours after the patient's condition has~~
 2209 ~~been stabilized or after determination that an emergency medical~~
 2210 ~~condition does not exist.~~

2211 ~~(i) Within the 72-hour examination period or, if the 72~~
 2212 ~~hours ends on a weekend or holiday, no later than the next~~

HB 1213

2010

2213 ~~working day thereafter, one of the following actions must be~~
2214 ~~taken, based on the individual needs of the patient:~~

2215 ~~1. The patient shall be released, unless he or she is~~
2216 ~~charged with a crime, in which case the patient shall be~~
2217 ~~returned to the custody of a law enforcement officer;~~

2218 ~~2. The patient shall be released, subject to the~~
2219 ~~provisions of subparagraph 1., for voluntary outpatient~~
2220 ~~treatment;~~

2221 ~~3. The patient, unless he or she is charged with a crime,~~
2222 ~~shall be asked to give express and informed consent to placement~~
2223 ~~as a voluntary patient, and, if such consent is given, the~~
2224 ~~patient shall be admitted as a voluntary patient; or~~

2225 ~~4. A petition for involuntary placement shall be filed in~~
2226 ~~the circuit court when outpatient or inpatient treatment is~~
2227 ~~deemed necessary. When inpatient treatment is deemed necessary,~~
2228 ~~the least restrictive treatment consistent with the optimum~~
2229 ~~improvement of the patient's condition shall be made available.~~
2230 ~~When a petition is to be filed for involuntary outpatient~~
2231 ~~placement, it shall be filed by one of the petitioners specified~~
2232 ~~in s. 394.4655(3)(a). A petition for involuntary inpatient~~
2233 ~~placement shall be filed by the facility administrator.~~

2234 (3) NOTICE OF RELEASE.—Notice of the release shall be
2235 given to the individual's ~~patient's~~ guardian or representative,
2236 to any person who executed a certificate admitting the
2237 individual ~~patient~~ to the receiving facility, and to any court
2238 that ~~which~~ ordered the individual's ~~patient's~~ evaluation.

2239 Section 20. Section 394.4655, Florida Statutes, is amended
2240 to read:

HB 1213

2010

2241 394.4655 Involuntary outpatient placement.—
 2242 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.—An
 2243 individual ~~A person~~ may be ordered to involuntary outpatient
 2244 placement upon a finding of the court ~~that~~ by clear and
 2245 convincing evidence that:
 2246 (a) The individual ~~is an adult person is 18 years of age~~
 2247 ~~or older~~;
 2248 (b) The individual ~~person~~ has a mental illness;
 2249 (c) The individual ~~person~~ is unlikely to survive safely in
 2250 the community without supervision, based on a clinical
 2251 determination;
 2252 (d) The individual ~~person~~ has a history of lack of
 2253 compliance with treatment for mental illness;
 2254 (e) The individual ~~person~~ has:
 2255 1. At least twice within the immediately preceding 36
 2256 months been involuntarily admitted to a receiving or treatment
 2257 facility ~~as defined in s. 394.455~~, or has received mental health
 2258 services in a forensic or correctional facility. The 36-month
 2259 period does not include any period during which the individual
 2260 ~~person~~ was admitted or incarcerated; or
 2261 2. Engaged in one or more acts of serious violent behavior
 2262 toward self or others, or attempts at serious bodily harm to
 2263 self ~~himself or herself~~ or others, within the preceding 36
 2264 months;
 2265 (f) Due to ~~The person is, as a result of~~ his or her mental
 2266 illness, the individual ~~is~~ unlikely to voluntarily participate
 2267 in the recommended treatment plan and ~~either he or she~~ has
 2268 refused voluntary placement for treatment after sufficient and

HB 1213

2010

2269 conscientious explanation and disclosure of the purpose of
 2270 placement for treatment or ~~he or she~~ is unable to determine for
 2271 himself or herself whether placement is necessary;

2272 (g) In view of the individual's ~~person's~~ treatment history
 2273 and current behavior, the individual ~~person~~ is in need of
 2274 involuntary outpatient placement in order to prevent a relapse
 2275 or deterioration that would be likely to result in serious
 2276 bodily harm to self ~~himself or herself~~ or others, or a
 2277 substantial harm to his or her well-being as set forth in s.
 2278 394.463(1);

2279 (h) It is likely that the individual ~~person~~ will benefit
 2280 from involuntary outpatient placement; and

2281 (i) All available, less restrictive alternatives that
 2282 ~~would~~ offer an opportunity for improvement of his or her
 2283 condition have been judged to be inappropriate or unavailable.

2284 (2) INVOLUNTARY OUTPATIENT PLACEMENT.—

2285 (a)~~1.~~ An individual ~~A patient~~ who is being recommended for
 2286 involuntary outpatient placement by the administrator of the
 2287 receiving facility where the patient has been examined may be
 2288 retained by the facility after adherence to the notice
 2289 procedures provided in s. 394.4599.

2290 1. The recommendation must be supported by the opinion of
 2291 a psychiatrist and the second opinion of a clinical psychologist
 2292 or another psychiatrist, both of whom have personally examined
 2293 the individual ~~patient~~ within the preceding 72 hours, that the
 2294 criteria for involuntary outpatient placement are met. However,
 2295 in a county having a population of fewer than 50,000, if the
 2296 administrator certifies that a psychiatrist or clinical

HB 1213

2010

2297 | psychologist is not available to provide the second opinion, the
 2298 | second opinion may be provided by a ~~licensed~~ physician who has
 2299 | postgraduate training and experience in diagnosis and treatment
 2300 | of mental and nervous disorders or by a psychiatric nurse. Any
 2301 | second opinion authorized in this subparagraph may be conducted
 2302 | through a face-to-face examination, in person or by electronic
 2303 | means. Such recommendation must be entered on an involuntary
 2304 | outpatient placement certificate that authorizes the receiving
 2305 | facility to retain the patient pending completion of a hearing.
 2306 | The certificate shall be made a part of the ~~patient's~~ clinical
 2307 | record.

2308 | 2. If the individual ~~patient~~ has been stabilized and no
 2309 | longer meets the criteria for involuntary examination pursuant
 2310 | to s. 394.463(1), he or she ~~the patient~~ must be released from
 2311 | the receiving facility while awaiting the hearing for
 2312 | involuntary outpatient placement.

2313 | 3. Before filing a petition for involuntary outpatient
 2314 | treatment, the administrator of the ~~a~~ receiving facility or a
 2315 | designated department representative must identify the service
 2316 | provider that will have primary responsibility for service
 2317 | provision under an order for involuntary outpatient placement,
 2318 | unless the individual ~~person~~ is otherwise participating in
 2319 | outpatient psychiatric treatment and is not in need of public
 2320 | financing for that treatment, in which case the individual, if
 2321 | eligible, may be ordered to involuntary treatment pursuant to
 2322 | the existing psychiatric treatment relationship.

2323 | ~~4.3.~~ The service provider shall prepare a written
 2324 | proposed treatment plan in consultation with the individual

2325 being held ~~patient~~ or his or her ~~the patient's~~ guardian
 2326 advocate, if appointed, for the court's consideration for
 2327 inclusion in the involuntary outpatient placement order. The
 2328 service provider shall ~~also~~ provide a copy of the proposed
 2329 treatment plan to the individual ~~patient~~ and the administrator
 2330 of the receiving facility. The treatment plan must specify the
 2331 nature and extent of the individual's ~~patient's~~ mental illness,
 2332 address the reduction of symptoms that necessitate involuntary
 2333 outpatient placement, and include measurable goals and
 2334 objectives for the services and treatment that are provided to
 2335 treat the individual's ~~person's~~ mental illness and assist the
 2336 individual ~~person~~ in living and functioning in the community or
 2337 to prevent a relapse or deterioration. Service providers may
 2338 select and supervise other providers ~~individuals~~ to implement
 2339 specific aspects of the treatment plan. The services in the
 2340 treatment plan must be deemed clinically appropriate by a
 2341 physician, clinical psychologist, psychiatric nurse, mental
 2342 health counselor, marriage and family therapist, or clinical
 2343 social worker who consults with, or is employed or contracted
 2344 by, the service provider. The service provider must certify to
 2345 the court in the proposed treatment plan whether sufficient
 2346 services for improvement and stabilization are currently
 2347 available and whether the service provider agrees to provide
 2348 those services. If the service provider certifies that the
 2349 services in the proposed treatment plan are not available, the
 2350 petitioner may not file the petition.

2351 (b) If an individual ~~a patient~~ in involuntary inpatient
 2352 placement meets the criteria for involuntary outpatient

HB 1213

2010

2353 placement, the administrator of the treatment facility may,
 2354 before the expiration of the period during which the treatment
 2355 facility is authorized to retain the individual patient,
 2356 recommend involuntary outpatient placement.

2357 1. The recommendation must be supported by the opinion of
 2358 a psychiatrist and the second opinion of a clinical psychologist
 2359 or another psychiatrist, both of whom have personally examined
 2360 the individual patient within the preceding 72 hours, that the
 2361 criteria for involuntary outpatient placement are met. However,
 2362 in a county having a population of fewer than 50,000, if the
 2363 administrator certifies that a psychiatrist or clinical
 2364 psychologist is not available to provide the second opinion, the
 2365 second opinion may be provided by a licensed physician who has
 2366 postgraduate training and experience in diagnosis and treatment
 2367 of mental and nervous disorders or by a psychiatric nurse. Any
 2368 second opinion authorized in this subparagraph may be conducted
 2369 through a face-to-face examination, in person or by electronic
 2370 means. Such recommendation must be entered on an involuntary
 2371 outpatient placement certificate, and the certificate must be
 2372 made a part of the ~~patient's~~ clinical record.

2373 ~~(e)1.~~ The administrator of the treatment facility shall
 2374 provide a copy of the involuntary outpatient placement
 2375 certificate and a copy of the state mental health discharge form
 2376 to a department representative in the county where the
 2377 individual patient will be residing. ~~For persons who are leaving~~
 2378 ~~a state mental health treatment facility, the petition for~~
 2379 ~~involuntary outpatient placement must be filed in the county~~
 2380 ~~where the patient will be residing.~~

2381 2. The service provider that will have primary
 2382 responsibility for service provision shall be identified by the
 2383 designated department representative prior to the order for
 2384 involuntary outpatient placement and shall ~~must~~, before ~~prior to~~
 2385 filing a petition for involuntary outpatient placement, certify
 2386 to the court whether the services recommended in the
 2387 individual's ~~patient's~~ discharge plan are available in the local
 2388 community and whether the service provider agrees to provide
 2389 those services. The service provider shall ~~must~~ develop with the
 2390 individual ~~patient~~, or the individual's ~~patient's~~ guardian
 2391 advocate, if one is appointed, a treatment or service plan that
 2392 addresses the needs identified in the discharge plan. The plan
 2393 must be deemed to be clinically appropriate by a physician,
 2394 clinical psychologist, psychiatric nurse, mental health
 2395 counselor, marriage and family therapist, or clinical social
 2396 worker, ~~as defined in this chapter~~, who consults with, or is
 2397 employed or contracted by, the service provider.

2398 ~~3. If the service provider certifies that the services in~~
 2399 ~~the proposed treatment or service plan are not available, the~~
 2400 ~~petitioner may not file the petition.~~

2401 (3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.—

2402 (a) A petition for involuntary outpatient placement may be
 2403 filed by:

- 2404 1. The administrator of a receiving facility; or
- 2405 2. The administrator of a treatment facility.

2406 (b) Each required criterion for involuntary outpatient
 2407 placement must be alleged and substantiated in the petition for
 2408 involuntary outpatient placement. A copy of the certificate

2409 recommending involuntary outpatient placement completed by a
 2410 qualified professional specified in subsection (2) must be
 2411 attached to the petition. A copy of the proposed treatment plan
 2412 must be attached to the petition. Before the petition is filed,
 2413 the service provider shall certify that the services in the
 2414 proposed treatment plan are available. If the necessary services
 2415 are not available in the ~~patient's local~~ community where the
 2416 individual will reside ~~to respond to the person's individual~~
 2417 ~~needs~~, the petition may not be filed.

2418 (c) A ~~The~~ petition for involuntary outpatient placement
 2419 must be filed in the county where the individual who is the
 2420 subject of the petition ~~patient~~ is located, unless the
 2421 individual ~~the patient~~ is being placed from a state treatment
 2422 facility, in which case the petition must be filed in the county
 2423 where the individual ~~patient~~ will reside. When the petition is
 2424 ~~has been~~ filed, the clerk of the court shall provide copies of
 2425 the petition and the proposed treatment plan to the department,
 2426 the individual ~~patient~~, the individual's ~~patient's~~ guardian or
 2427 representative, the state attorney, and the public defender or
 2428 ~~the patient's~~ private counsel representing the individual. A fee
 2429 may not be charged for filing a petition under this subsection.

2430 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day
 2431 after ~~the~~ filing ~~of~~ a petition for involuntary outpatient
 2432 placement, the court shall appoint a ~~the~~ public defender to
 2433 represent the individual ~~person~~ who is the subject of the
 2434 petition, unless the individual ~~person~~ is otherwise represented
 2435 by counsel. The clerk of the court shall immediately notify the
 2436 public defender of the appointment. The public defender shall

HB 1213

2010

2437 represent the individual ~~person~~ until the petition is dismissed,
2438 the court order expires, or the individual ~~patient~~ is discharged
2439 from involuntary outpatient placement. An attorney who
2440 represents the individual ~~patient~~ shall have access to the
2441 individual ~~patient~~, witnesses, and records relevant to the
2442 presentation of the individual's ~~patient's~~ case and shall
2443 represent the interests of the individual ~~patient~~, regardless of
2444 the source of payment to the attorney.

2445 ~~(5) CONTINUANCE OF HEARING. The patient is entitled, with~~
2446 ~~the concurrence of the patient's counsel, to at least one~~
2447 ~~continuance of the hearing. The continuance shall be for a~~
2448 ~~period of up to 4 weeks.~~

2449 ~~(5)(6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.-~~

2450 (a)1. The court shall hold the hearing on involuntary
2451 outpatient placement within 5 working days after the filing of
2452 the petition, unless a continuance is granted. The hearing shall
2453 be held in the county where the petition is filed, ~~shall~~ be as
2454 convenient to the individual who is the subject of the petition
2455 ~~patient~~ as is consistent with orderly procedure, and ~~shall~~ be
2456 conducted in physical settings not likely to be injurious to the
2457 individual's ~~patient's~~ condition. If the court finds that the
2458 individual's ~~patient's~~ attendance at the hearing is not
2459 consistent with the individual's best interests, ~~of the patient~~
2460 and if the individual's ~~patient's~~ counsel does not object, the
2461 court may waive the presence of the individual ~~patient~~ from all
2462 or any portion of the hearing. The state attorney for the
2463 circuit in which the individual ~~patient~~ is located shall
2464 represent the state, rather than the petitioner, as the real

HB 1213

2010

2465 party in interest in the proceeding.

2466 (b)2- The court may appoint a magistrate ~~master~~ to preside
 2467 at the hearing. One of the professionals who executed the
 2468 involuntary outpatient placement certificate shall be a witness.
 2469 The individual who is the subject of the petition ~~patient~~ and
 2470 his or her ~~the patient's~~ guardian or representative shall be
 2471 informed by the court of the right to an independent expert
 2472 examination. If the individual ~~patient~~ cannot afford such an
 2473 examination, the court shall provide ~~for~~ one. The independent
 2474 expert's report is ~~shall be~~ confidential and not discoverable,
 2475 unless the expert is ~~to be~~ called as a witness for the
 2476 individual ~~patient~~ at the hearing. The court shall allow
 2477 testimony from persons ~~individuals~~, including family members,
 2478 deemed by the court to be relevant ~~under state law~~, regarding
 2479 the individual's ~~person's~~ prior history and how that ~~prior~~
 2480 history relates to the individual's ~~person's~~ current condition.
 2481 The testimony in the hearing must be ~~given~~ under oath, and the
 2482 proceedings must be recorded. The individual ~~patient~~ may refuse
 2483 to testify at the hearing.

2484 (c) At the hearing on involuntary outpatient placement,
 2485 the court shall consider testimony and evidence regarding the
 2486 competence of the individual being held to consent to treatment.
 2487 If the court finds that the individual is incompetent to
 2488 consent, it shall appoint a guardian advocate as provided in s.
 2489 394.4598.

2490 (d) The individual who is the subject of the petition is
 2491 entitled to at least one continuance of the hearing for up to 4
 2492 weeks, with the concurrence of the individual's counsel.

2493 However, the individual's counsel may not request a continuance
 2494 unless the continuance is the individual's expressed desire.

2495 (6) COURT ORDER.-

2496 (a) ~~(b)~~1. If the court concludes that the individual who is
 2497 the subject of the petition ~~patient~~ meets the criteria for
 2498 involuntary outpatient placement under ~~pursuant to~~ subsection
 2499 (1), the court shall issue an order for involuntary outpatient
 2500 placement. The court order may ~~shall~~ be for a ~~period of~~ up to 6
 2501 months. The order must specify the nature and extent of the
 2502 individual's ~~patient's~~ mental illness. The court order ~~of the~~
 2503 ~~court~~ and the treatment plan must ~~shall~~ be made part of the
 2504 ~~patient's~~ clinical record. The service provider shall discharge
 2505 an individual ~~a patient~~ from involuntary outpatient placement
 2506 when the order expires or any time the individual ~~patient~~ no
 2507 longer meets the criteria for involuntary placement. Upon
 2508 discharge, the service provider shall send a certificate of
 2509 discharge to the court.

2510 (b)2. The court may not order the department or the
 2511 service provider to provide services if the program or service
 2512 is not available in the ~~patient's~~ local community of the
 2513 individual being served, if there is no space available in the
 2514 program or service for the individual ~~patient~~, or if funding is
 2515 not available for the program or service. A copy of the order
 2516 must be sent to the Agency for Health Care Administration by the
 2517 service provider within 1 working day after it is received from
 2518 the court. After the placement order is issued, the service
 2519 provider and the individual ~~patient~~ may modify ~~provisions of~~ the
 2520 treatment plan. For any material modification of the treatment

HB 1213

2010

2521 plan to which the individual ~~patient~~ or the individual's
 2522 ~~patient's~~ guardian advocate, if appointed, agrees ~~does agree~~,
 2523 the service provider shall send notice of the modification to
 2524 the court. Any material modifications of the treatment plan
 2525 which are contested by the individual ~~patient~~ or the
 2526 individual's ~~patient's~~ guardian advocate, if appointed, must be
 2527 approved or disapproved by the court consistent with the
 2528 requirements of subsection (2).

2529 (c)3. If, in the clinical judgment of a physician, the
 2530 individual being served ~~patient~~ has failed or has refused to
 2531 comply with the treatment ordered by the court, and, in the
 2532 clinical judgment of the physician, efforts were made to solicit
 2533 compliance and the individual ~~patient~~ may meet the criteria for
 2534 involuntary examination, the individual ~~a person~~ may be brought
 2535 to a receiving facility pursuant to s. 394.463 for involuntary
 2536 examination. If, after examination, the individual ~~patient~~ does
 2537 not meet the criteria for involuntary inpatient placement under
 2538 ~~pursuant to~~ s. 394.467, the individual ~~patient~~ must be
 2539 discharged from the receiving facility. The involuntary
 2540 outpatient placement order remains ~~shall remain~~ in effect unless
 2541 the service provider determines that the individual ~~patient~~ no
 2542 longer meets the criteria for involuntary outpatient placement
 2543 or until the order expires. The service provider shall ~~must~~
 2544 determine whether modifications should be made to the existing
 2545 treatment plan and must ~~continue to attempt to continue to~~
 2546 engage the individual ~~patient~~ in treatment. For any material
 2547 modification of the treatment plan to which the individual
 2548 ~~patient~~ or the individual's ~~patient's~~ guardian advocate, if

HB 1213

2010

2549 appointed, agrees ~~does agree~~, the service provider shall send
 2550 notice of the modification to the court. Any material
 2551 modifications of the treatment plan which are contested by the
 2552 individual patient or the individual's patient's guardian
 2553 advocate, if appointed, must be approved or disapproved by the
 2554 court consistent with the requirements of subsection (2).

2555 (d) ~~(e)~~ If, at any time before the conclusion of the
 2556 initial hearing on involuntary outpatient placement, it appears
 2557 to the court that the individual person does not meet the
 2558 criteria for involuntary outpatient placement under this section
 2559 but, ~~instead~~, meets the criteria for involuntary inpatient
 2560 placement, the court may order the individual person admitted
 2561 for involuntary inpatient examination under s. 394.463. If the
 2562 individual person instead meets the criteria for involuntary
 2563 assessment, protective custody, or involuntary admission under
 2564 ~~pursuant to~~ s. 397.675, the court may order the individual
 2565 ~~person~~ to be admitted for involuntary assessment ~~for a period of~~
 2566 ~~5 days~~ pursuant to s. 397.6811. Thereafter, all proceedings are
 2567 ~~shall be~~ governed by chapter 397.

2568 ~~(d) At the hearing on involuntary outpatient placement,~~
 2569 ~~the court shall consider testimony and evidence regarding the~~
 2570 ~~patient's competence to consent to treatment. If the court finds~~
 2571 ~~that the patient is incompetent to consent to treatment, it~~
 2572 ~~shall appoint a guardian advocate as provided in s. 394.4598.~~
 2573 ~~The guardian advocate shall be appointed or discharged in~~
 2574 ~~accordance with s. 394.4598.~~

2575 (e) The administrator of the receiving facility or the
 2576 designated department representative shall provide a copy of the

HB 1213

2010

2577 court order and adequate documentation of an individual's a
 2578 ~~patient's~~ mental illness to the service provider for involuntary
 2579 outpatient placement. Such documentation must include any
 2580 advance directives made by the individual ~~patient~~, a psychiatric
 2581 evaluation of the individual ~~patient~~, and any evaluations of the
 2582 individual ~~patient~~ performed by a clinical psychologist or a
 2583 clinical social worker.

2584 (7) ~~PROCEDURE FOR~~ CONTINUED INVOLUNTARY OUTPATIENT
 2585 PLACEMENT.—

2586 (a)~~1.~~ If an individual ~~the person~~ continues to meet the
 2587 criteria for involuntary outpatient placement, the service
 2588 provider shall, before the expiration of the period during which
 2589 the placement ~~treatment~~ is ordered ~~for the person~~, file in the
 2590 circuit court a petition for continued involuntary outpatient
 2591 placement.

2592 ~~1.2.~~ The existing involuntary outpatient placement order
 2593 remains in effect until disposition of ~~on~~ the petition for
 2594 continued involuntary outpatient placement.

2595 ~~2.3.~~ A certificate must ~~shall~~ be attached to the petition
 2596 which includes a statement from the individual's ~~person's~~
 2597 physician or clinical psychologist justifying the request, a
 2598 brief description of the individual's ~~patient's~~ treatment during
 2599 the time he or she was involuntarily placed, and a personalized
 2600 ~~an individualized~~ plan of continued treatment.

2601 ~~3.4.~~ The service provider shall develop the individualized
 2602 plan of continued treatment in consultation with the individual
 2603 ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if
 2604 appointed. When the petition has been filed, the clerk of the

HB 1213

2010

2605 court shall provide copies of the certificate and the
2606 ~~individualized~~ plan of continued treatment to the department,
2607 the individual patient, the individual's patient's guardian
2608 advocate, the state attorney, and the individual's patient's
2609 private counsel or the public defender.

2610 (b) Within 1 court working day after the filing of a
2611 petition for continued involuntary outpatient placement, the
2612 court shall appoint the public defender to represent the
2613 individual person who is the subject of the petition, unless the
2614 individual person is otherwise represented by counsel. The clerk
2615 of the court shall immediately notify the public defender of
2616 such appointment. The public defender shall represent the
2617 individual person until the petition is dismissed, ~~or~~ the court
2618 order expires, or the individual patient is discharged from
2619 involuntary outpatient placement. An Any attorney representing
2620 the individual must patient shall have access to the individual
2621 patient, witnesses, and records relevant to the presentation of
2622 the individual's patient's case and shall represent the
2623 interests of the individual patient, regardless of the source of
2624 payment to the attorney.

2625 (c) The court shall inform the individual who is the
2626 subject of the petition and his or her guardian, guardian
2627 advocate, or representative of the individual's right to an
2628 independent expert examination. If the individual cannot afford
2629 such an examination, the court shall provide one.

2630 (d) ~~(e)~~ Hearings on petitions for continued involuntary
2631 outpatient placement are ~~shall be~~ before the circuit court. The
2632 court may appoint a magistrate master to preside at the hearing.

HB 1213

2010

2633 The procedures for obtaining an order pursuant to this paragraph
 2634 must ~~shall~~ be in accordance with subsection (5) ~~(6)~~, except that
 2635 the time period included in paragraph (1)(e) is not applicable
 2636 for ~~in~~ determining the appropriateness of additional periods of
 2637 involuntary outpatient placement.

2638 (e) ~~(d)~~ Notice of the hearing shall be provided in
 2639 accordance with ~~as set forth in~~ s. 394.4599. The individual
 2640 being served ~~patient~~ and the individual's ~~patient's~~ attorney may
 2641 agree to a period of continued outpatient placement without a
 2642 court hearing.

2643 (f) ~~(e)~~ The same procedure must ~~shall~~ be repeated before
 2644 the expiration of each additional period the individual being
 2645 served ~~patient~~ is placed in treatment.

2646 (g) ~~(f)~~ If the individual in involuntary outpatient
 2647 placement ~~patient~~ has previously been found incompetent to
 2648 consent to treatment, the court shall consider testimony and
 2649 evidence regarding the individual's ~~patient's~~ competence.
 2650 Section 394.4598 governs the discharge of the guardian advocate
 2651 if the individual's ~~patient's~~ competency to consent to treatment
 2652 has been restored.

2653 Section 21. Section 394.467, Florida Statutes, is amended
 2654 to read:

2655 394.467 Involuntary inpatient placement.—

2656 (1) CRITERIA.—An individual ~~A person~~ may be placed in
 2657 involuntary inpatient placement for treatment upon a finding of
 2658 the court by clear and convincing evidence that:

2659 (a) He or she has a mental illness ~~is mentally ill~~ and
 2660 because of his or her mental illness:

HB 1213

2010

2661 1.a. He or she has refused voluntary placement for
 2662 treatment after sufficient and conscientious explanation and
 2663 disclosure of the purpose of placement for treatment; or
 2664 b. He or she is unable to determine for himself or herself
 2665 whether placement is necessary; and
 2666 2.a. He or she is manifestly incapable of surviving alone
 2667 or with the help of willing and responsible family or friends,
 2668 including available alternative services, and, without
 2669 treatment, is likely to suffer from neglect or refuse to care
 2670 for himself or herself, and such neglect or refusal poses a real
 2671 and present threat of substantial harm to his or her well-being;
 2672 or
 2673 b. There is substantial likelihood that in the near future
 2674 he or she will inflict serious bodily harm on self or others
 2675 ~~himself or herself or another person~~, as evidenced by recent
 2676 behavior causing, attempting, or threatening such harm; and
 2677 (b) All available less restrictive treatment alternatives
 2678 that ~~which would~~ offer an opportunity for improvement of his or
 2679 her condition have been judged to be inappropriate.
 2680 (2) ADMISSION TO A TREATMENT FACILITY.—An individual ~~A~~
 2681 ~~patient~~ may be retained by a receiving facility or involuntarily
 2682 placed in a treatment facility upon the recommendation of the
 2683 administrator of the receiving facility where the individual
 2684 ~~patient~~ has been examined and after adherence to the notice and
 2685 hearing procedures provided in s. 394.4599. The recommendation
 2686 must be supported by the opinion of a psychiatrist and the
 2687 second opinion of a clinical psychologist or another
 2688 psychiatrist, both of whom have personally examined the

HB 1213

2010

2689 individual patient within the preceding 72 hours, that the
 2690 criteria for involuntary inpatient placement are met. However,
 2691 in a county that has a population of fewer than 50,000, if the
 2692 administrator certifies that a psychiatrist or clinical
 2693 psychologist is not available to provide the second opinion, the
 2694 second opinion may be provided by a ~~licensed~~ physician ~~who has~~
 2695 ~~postgraduate training and experience in diagnosis and treatment~~
 2696 ~~of mental and nervous disorders~~ or by a psychiatric nurse. Any
 2697 second opinion authorized in this subsection may be conducted
 2698 through a face-to-face examination, in person or by electronic
 2699 means. Such recommendation must ~~shall~~ be entered on an
 2700 involuntary inpatient placement certificate that authorizes the
 2701 receiving facility to retain the individual being held patient
 2702 pending transfer to a treatment facility or completion of a
 2703 hearing.

2704 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—

2705 (a) The administrator of the facility shall file a
 2706 petition for involuntary inpatient placement in the court in the
 2707 county where the individual patient is located. Upon filing, the
 2708 clerk of the court shall provide copies to the department, the
 2709 individual patient, the individual's patient's guardian or
 2710 representative, and the state attorney and public defender of
 2711 the judicial circuit in which the individual patient is located.
 2712 A No fee may not shall be charged for the filing of a petition
 2713 under this subsection.

2714 (b) A receiving or treatment facility filing a petition
 2715 for involuntary inpatient placement shall send a copy of the
 2716 petition to the Agency for Health Care Administration by the

HB 1213

2010

2717 next working day.

2718 (4) APPOINTMENT OF COUNSEL.—

2719 (a) Within 1 court working day after the filing of a
2720 petition for involuntary inpatient placement, the court shall
2721 appoint the public defender to represent the individual ~~person~~
2722 who is the subject of the petition, unless the individual ~~person~~
2723 is otherwise represented by counsel. The clerk of the court
2724 shall immediately notify the public defender of such
2725 appointment. Any attorney representing the individual ~~patient~~
2726 shall have access to the individual ~~patient~~, witnesses, and
2727 records relevant to the presentation of the individual's
2728 ~~patient's~~ case and shall represent the interests of the
2729 individual ~~patient~~, regardless of the source of payment to the
2730 attorney. An attorney representing an individual in involuntary
2731 placement proceedings shall represent the individual's expressed
2732 desires and must be present and actively participate in all
2733 hearings on involuntary placement.

2734 (b) The state attorney for the circuit in which the
2735 individual is located shall represent the state rather than the
2736 petitioning facility administrator as the real party in interest
2737 in the proceeding. The state attorney shall have access to the
2738 individual's clinical record and witnesses and shall
2739 independently evaluate and confirm the allegations set forth in
2740 the petition for involuntary placement. If the allegations are
2741 substantiated, the state attorney shall vigorously prosecute the
2742 petition. If the allegations are not substantiated, the state
2743 attorney shall withdraw the petition. The state attorney shall
2744 be present and actively participate in all hearings on

HB 1213

2010

2745 involuntary placement.

2746 (5) CONTINUANCE OF HEARING.—The individual ~~patient~~ is
 2747 entitled, with the concurrence of the individual's ~~patient's~~
 2748 counsel, to at least one continuance of the hearing. Requests
 2749 for a continuance from parties other than the individual or his
 2750 or her counsel may not be granted. The continuance shall be for
 2751 a period of up to 4 weeks. At the time the court is considering
 2752 a motion for continuance, the court shall also conduct a hearing
 2753 to consider the capacity of the individual to consent to
 2754 treatment if there is a pending petition for adjudication of
 2755 incompetence to consent to treatment. If the court finds that
 2756 the individual is not competent to consent to treatment, a
 2757 guardian advocate shall be appointed at the time the involuntary
 2758 placement hearing is continued to make mental health decisions
 2759 for the individual.

2760 (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

2761 (a) ~~1.~~ The court shall hold the hearing on involuntary
 2762 inpatient placement within 5 working days after the petition is
 2763 filed, unless a continuance is granted.

2764 1. Except for good cause documented in the court file, the
 2765 hearing shall be held in the receiving or treatment facility
 2766 county where the individual patient is located. If the hearing
 2767 cannot be held in the receiving or treatment facility, it must
 2768 held in a location and shall be as convenient to the individual
 2769 patient as is may be consistent with orderly procedure and which
 2770 is shall be conducted in physical settings not likely to be
 2771 injurious to the individual's patient's condition. If the
 2772 individual wishes to waive his or her court finds that the

2773 ~~patient's~~ attendance at the hearing, the court must determine
 2774 that the waiver is knowing, intelligent, and voluntary before
 2775 waiving ~~is not consistent with the best interests of the~~
 2776 ~~patient, and the patient's counsel does not object, the court~~
 2777 ~~may waive~~ the presence of the individual patient from all or any
 2778 portion of the hearing. ~~The state attorney for the circuit in~~
 2779 ~~which the patient is located shall represent the state, rather~~
 2780 ~~than the petitioning facility administrator, as the real party~~
 2781 ~~in interest in the proceeding.~~

2782 2. The court may appoint a general or special magistrate
 2783 to preside at the hearing. One of the two professionals who
 2784 executed the involuntary inpatient placement certificate shall
 2785 be a witness. The individual patient and the individual's
 2786 ~~patient's~~ guardian or representative shall be informed by the
 2787 court of the right to an independent expert examination. If the
 2788 individual patient cannot afford such an examination, the court
 2789 shall provide for one. The independent expert's report is ~~shall~~
 2790 ~~be~~ confidential and not discoverable, unless the expert is ~~to be~~
 2791 called as a witness for the individual patient at the hearing.
 2792 The testimony in the hearing must be ~~given~~ under oath, and the
 2793 proceedings must be recorded. The individual patient may refuse
 2794 to testify at the hearing.

2795 3. The court shall allow testimony from persons, including
 2796 family members, deemed by the court to be relevant regarding the
 2797 individual's prior history and how that prior history relates to
 2798 the individual's current condition.

2799 (b) If the court concludes that the individual patient
 2800 meets the criteria for involuntary inpatient placement, it shall

HB 1213

2010

2801 order that the individual ~~patient~~ be transferred to a treatment
 2802 facility or, if the individual ~~patient~~ is at a treatment
 2803 facility, that the individual ~~patient~~ be retained there or be
 2804 treated at any other appropriate receiving or treatment
 2805 facility, or that the individual ~~patient~~ receive services from a
 2806 receiving or treatment facility, on an involuntary basis, for a
 2807 ~~period of~~ up to 6 months. The order must ~~shall~~ specify the
 2808 nature and extent of the individual's ~~patient's~~ mental illness.
 2809 The facility shall discharge the individual ~~a patient~~ any time
 2810 the individual ~~patient~~ no longer meets the criteria for
 2811 involuntary inpatient placement, unless the individual ~~patient~~
 2812 has transferred to voluntary status.

2813 (c) If at any time before ~~prior to~~ the conclusion of the
 2814 hearing on involuntary inpatient placement it appears to the
 2815 court that the individual ~~person~~ does not meet the criteria for
 2816 involuntary inpatient placement under this section, but instead
 2817 meets the criteria for involuntary outpatient placement, the
 2818 court may order the individual ~~person~~ evaluated for involuntary
 2819 outpatient placement pursuant to s. 394.4655. The petition and
 2820 hearing procedures set forth in s. 394.4655 shall apply. If the
 2821 individual ~~person~~ instead meets the criteria for involuntary
 2822 assessment, protective custody, or involuntary admission
 2823 pursuant to s. 397.675, ~~then~~ the court may order the individual
 2824 ~~person to be~~ admitted for involuntary assessment for up to a
 2825 ~~period of~~ 5 days pursuant to s. 397.6811. Thereafter, all
 2826 proceedings are ~~shall be~~ governed by chapter 397.

2827 (d) At the hearing on involuntary inpatient placement, the
 2828 court shall consider testimony and evidence regarding the

HB 1213

2010

2829 individual's ~~patient's~~ competence to consent to treatment. If
 2830 the court finds that the individual ~~patient~~ is incompetent to
 2831 consent to treatment, it shall appoint a guardian advocate as
 2832 provided in s. 394.4598.

2833 (e) The administrator of the receiving facility shall
 2834 provide a copy of the court order and adequate documentation of
 2835 an individual's ~~a patient's~~ mental illness to the administrator
 2836 of a treatment facility if the individual ~~whenever a patient~~ is
 2837 ordered for involuntary inpatient placement, whether by civil or
 2838 criminal court. The documentation must ~~shall~~ include any advance
 2839 directives made by the individual ~~patient~~, a psychiatric
 2840 evaluation of the individual ~~patient~~, and any evaluations of the
 2841 individual ~~patient~~ performed by a clinical psychologist, a
 2842 marriage and family therapist, a mental health counselor, or a
 2843 clinical social worker. The administrator of a treatment
 2844 facility may refuse admission to an individual ~~any patient~~
 2845 directed to its facilities on an involuntary basis, whether by
 2846 civil or criminal court order, who is not accompanied ~~at the~~
 2847 ~~same time~~ by adequate orders and documentation.

2848 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
 2849 PLACEMENT.—

2850 (a) Hearings on petitions for continued involuntary
 2851 inpatient placement shall be administrative hearings and shall
 2852 be conducted in accordance with ~~the provisions of~~ s. 120.57(1),
 2853 except that an ~~any~~ order entered by an ~~the~~ administrative law
 2854 judge is ~~shall be~~ final and subject to judicial review in
 2855 accordance with s. 120.68. Orders concerning an individual
 2856 ~~patients~~ committed after successfully pleading not guilty by

HB 1213

2010

2857 | reason of insanity are ~~shall be~~ governed by the provisions of s.
 2858 | 916.15.

2859 | (b) If the individual ~~patient~~ continues to meet the
 2860 | criteria for involuntary inpatient placement, the administrator
 2861 | shall, before ~~prior to~~ the expiration of the period ~~during which~~
 2862 | the treatment facility is authorized to retain the individual
 2863 | ~~patient~~, file a petition requesting authorization for continued
 2864 | involuntary inpatient placement. The request must ~~shall~~ be
 2865 | accompanied by a statement from the individual's ~~patient's~~
 2866 | physician or clinical psychologist justifying the request, a
 2867 | brief description of the individual's ~~patient's~~ treatment during
 2868 | the time he or she was involuntarily placed, and a personalized
 2869 | ~~an individualized~~ plan of continued treatment. Notice of the
 2870 | hearing must ~~shall~~ be provided in accordance with ~~as set forth~~
 2871 | ~~in~~ s. 394.4599. If at the hearing the administrative law judge
 2872 | finds that attendance at the hearing is not consistent with the
 2873 | individual's best interests ~~of the patient~~, the administrative
 2874 | law judge may waive the presence of the individual ~~patient~~ from
 2875 | all or any portion of the hearing, unless the individual
 2876 | ~~patient~~, through counsel, objects to the waiver of presence. The
 2877 | testimony in the hearing must be under oath, and the proceedings
 2878 | must be recorded.

2879 | (c) Unless the individual ~~patient~~ is otherwise represented
 2880 | or is ineligible, he or she shall be represented at the hearing
 2881 | on the petition for continued involuntary inpatient placement by
 2882 | the public defender of the circuit in which the facility is
 2883 | located.

2884 | (d) The Division of Administrative Hearings shall inform

2885 the individual and his or her guardian, guardian advocate, or
 2886 representative of the right to an independent expert
 2887 examination. If the individual cannot afford such an
 2888 examination, the administrative law judge shall appoint an
 2889 independent expert and the county of the individual's residence
 2890 shall be billed for the cost of the examination.

2891 (e)~~(d)~~ If at a hearing it is shown that the individual
 2892 ~~patient~~ continues to meet the criteria for involuntary inpatient
 2893 placement, the administrative law judge shall sign the order for
 2894 continued involuntary inpatient placement for a period of up to
 2895 ~~not to exceed~~ 6 months. The same procedure must ~~shall~~ be
 2896 repeated before ~~prior to~~ the expiration of each additional
 2897 period the individual ~~patient~~ is retained.

2898 (f)~~(e)~~ If continued involuntary inpatient placement is
 2899 necessary for an individual ~~a patient~~ admitted while serving a
 2900 criminal sentence, but whose sentence is about to expire, or for
 2901 a minor ~~patient~~ involuntarily placed ~~while a minor but~~ who is
 2902 about to reach the age of 18, the administrator shall petition
 2903 the administrative law judge for an order authorizing continued
 2904 involuntary inpatient placement.

2905 (g)~~(f)~~ If the individual ~~patient~~ has been previously found
 2906 incompetent to consent to treatment, the administrative law
 2907 judge shall consider testimony and evidence regarding the
 2908 individual's ~~patient's~~ competence. If the administrative law
 2909 judge finds evidence that the individual ~~patient~~ is now
 2910 competent to consent to treatment, the ~~administrative law~~ judge
 2911 may issue a recommended order to the court that found the
 2912 individual ~~patient~~ incompetent to consent to treatment that the

HB 1213

2010

2913 individual's ~~patient's~~ competence be restored and that any
 2914 guardian advocate previously appointed be discharged.

2915 (8) RETURN TO FACILITY OF PATIENTS.—If an individual held
 2916 ~~When a patient~~ at a treatment facility leaves the facility
 2917 without authorization, the administrator may authorize a search
 2918 for, ~~the patient~~ and the return of, the individual patient to
 2919 the facility. The administrator may request the assistance of a
 2920 law enforcement agency ~~in the search for and return of the~~
 2921 ~~patient.~~

2922 Section 22. Section 394.46715, Florida Statutes, is
 2923 amended to read:

2924 394.46715 Rulemaking authority.—The department may adopt
 2925 rules to administer ~~of Children and Family Services shall have~~
 2926 ~~rulemaking authority to implement the provisions of~~ ss. 394.455,
 2927 394.4598, 394.4615, 394.463, 394.4655, and 394.467 ~~as amended or~~
 2928 ~~created by this act.~~ These rules are ~~shall be~~ for the purpose of
 2929 protecting the health, safety, and well-being of individuals
 2930 ~~persons~~ examined, treated, or placed under this part ~~act.~~

2931 Section 23. Section 394.4672, Florida Statutes, is amended
 2932 to read:

2933 394.4672 Procedure for placement of veteran with federal
 2934 agency.—

2935 (1) If a ~~Whenever it is determined by the court~~ determines
 2936 that an individual ~~a person~~ meets the criteria for involuntary
 2937 placement and he or she ~~it appears that such person~~ is eligible
 2938 for care or treatment by the United States Department of
 2939 Veterans Affairs or other agency of the United States
 2940 Government, the court, upon receipt of a certificate from the

2941 United States Department of Veterans Affairs or such other
 2942 agency showing that facilities are available and that the
 2943 individual person is eligible for care or treatment therein, may
 2944 place that individual person with the United States Department
 2945 of Veterans Affairs or other federal agency. The individual
 2946 ~~person whose placement is sought~~ shall be personally served with
 2947 notice of the pending placement proceeding in the manner as
 2948 provided in this part. ~~and nothing in~~ This section does not
 2949 ~~shall~~ affect the individual's ~~his or her~~ right to appear and be
 2950 heard in the proceeding. Upon placement, the individual is
 2951 ~~person shall be~~ subject to the ~~rules and~~ regulations of the
 2952 United States Department of Veterans Affairs or other federal
 2953 agency.

2954 (2) The judgment or order of placement issued by a court
 2955 of competent jurisdiction of another state or of the District of
 2956 Columbia which places an individual, ~~placing a person~~ with the
 2957 United States Department of Veterans Affairs or other federal
 2958 agency for care or treatment has, ~~shall have~~ the same force and
 2959 effect in this state as in the jurisdiction of the court
 2960 entering the judgment or making the order. ~~and~~ The courts of
 2961 the placing state or of the District of Columbia shall retain ~~be~~
 2962 ~~deemed to have retained~~ jurisdiction over ~~of~~ the individual
 2963 ~~person~~ so placed. Consent is hereby given to the application of
 2964 the law of the placing state or district with respect to the
 2965 authority of the chief officer of any facility of the United
 2966 States Department of Veterans Affairs or other federal agency
 2967 operated in this state to retain custody or to transfer, parole,
 2968 or discharge the individual person.

HB 1213

2010

2969 (3) Upon receipt of a certificate of the United States
 2970 Department of Veterans Affairs or another ~~such other~~ federal
 2971 agency that facilities are available for the care or treatment
 2972 individuals who have mental illness ~~of mentally ill persons~~ and
 2973 that the individual ~~person~~ is eligible for that care or
 2974 treatment, the administrator of the receiving or treatment
 2975 facility may ~~cause the transfer of~~ that individual ~~person~~ to the
 2976 United States Department of Veterans Affairs or other federal
 2977 agency. Upon ~~effecting~~ such transfer, the committing court shall
 2978 be notified by the transferring agency. An individual may not ~~No~~
 2979 ~~person shall~~ be transferred to the United States Department of
 2980 Veterans Affairs or other federal agency if he or she is
 2981 confined pursuant to the conviction of any felony or misdemeanor
 2982 or if he or she has been acquitted of the charge solely on the
 2983 ground of insanity, unless prior to transfer the court placing
 2984 the individual ~~such person~~ enters an order for the transfer
 2985 after appropriate motion and hearing and without objection by
 2986 the United States Department of Veterans Affairs.

2987 (4) An individual ~~Any person~~ transferred as provided in
 2988 this section shall be deemed to be placed with the United States
 2989 Department of Veterans Affairs or other federal agency pursuant
 2990 to the original placement.

2991 Section 24. Section 394.4674, Florida Statutes, is
 2992 repealed.

2993 Section 25. Section 394.4685, Florida Statutes, is amended
 2994 to read:

2995 394.4685 Transfer between ~~of patients among~~ facilities.—

2996 (1) TRANSFER BETWEEN PUBLIC FACILITIES.—

2997 (a) An individual ~~A patient~~ who has been admitted to a
 2998 public receiving facility, or his or her ~~the~~ family member,
 2999 guardian, or guardian advocate ~~of such patient~~, may request the
 3000 transfer of the individual ~~patient~~ to another public receiving
 3001 facility. An individual ~~A patient~~ who has been admitted to a
 3002 public treatment facility, or his or her ~~the~~ family member,
 3003 guardian, or guardian advocate ~~of such patient~~, may request the
 3004 transfer of the individual ~~patient~~ to another public treatment
 3005 facility. Depending on the medical treatment or mental health
 3006 treatment needs of the individual ~~patient~~ and the availability
 3007 of appropriate facility resources, the individual ~~patient~~ may be
 3008 transferred at the discretion of the department. If the
 3009 department approves the transfer of an individual on involuntary
 3010 status ~~patient~~, notice in accordance with ~~according to the~~
 3011 ~~provisions of~~ s. 394.4599 must ~~shall~~ be given before ~~prior to~~
 3012 the transfer by the transferring facility. The department shall
 3013 respond to the request for transfer within 2 working days after
 3014 receipt of the request by the facility administrator.

3015 (b) If ~~When~~ required by the medical treatment or mental
 3016 health treatment needs of the individual ~~patient~~ or the
 3017 efficient use ~~utilization~~ of a public receiving or public
 3018 treatment facility, an individual ~~a patient~~ may be transferred
 3019 from one receiving facility to another, or one treatment
 3020 facility to another, at the department's discretion, or, with
 3021 the express and informed consent of the individual ~~patient~~ or
 3022 the individual's ~~patient's~~ guardian or guardian advocate, to a
 3023 facility in another state. Notice in accordance with ~~according~~
 3024 ~~to the provisions of~~ s. 394.4599 must ~~shall~~ be given before

HB 1213

2010

3025 ~~prior to~~ the transfer by the transferring facility. If prior
 3026 notice is not possible, notice of the transfer must ~~shall~~ be
 3027 provided as soon as practicable after the transfer.

3028 (2) TRANSFER FROM PUBLIC TO PRIVATE FACILITIES.—

3029 (a) An individual ~~A patient~~ who has been admitted to a
 3030 public receiving or public treatment facility and has requested,
 3031 ~~either~~ personally or through his or her guardian or guardian
 3032 advocate, and is able to pay for treatment in a private facility
 3033 shall be transferred at the individual's ~~patient's~~ expense to a
 3034 private facility upon acceptance of the individual ~~patient~~ by
 3035 the private facility.

3036 (b) A public facility may request the transfer of an
 3037 individual from the facility to a private facility, and the
 3038 individual may be transferred upon acceptance of the individual
 3039 by the private facility.

3040 (3) TRANSFER FROM PRIVATE TO PUBLIC FACILITIES.—

3041 (a) An individual ~~A patient~~ or his or her ~~the patient's~~
 3042 guardian or guardian advocate may request the transfer of the
 3043 individual ~~patient~~ from a private to a public facility, and the
 3044 individual ~~patient~~ may be so transferred upon acceptance of the
 3045 individual ~~patient~~ by the public facility.

3046 (b) A private facility may request the transfer of an
 3047 individual ~~a patient~~ from the facility to a public facility, and
 3048 the individual ~~patient~~ may be ~~so~~ transferred upon acceptance of
 3049 the individual ~~patient~~ by the public facility. The cost of such
 3050 transfer ~~is shall be~~ the responsibility of the transferring
 3051 facility.

3052 (c) A public facility must respond to a request for the

HB 1213

2010

3053 transfer of an individual ~~a patient~~ within 2 working days after
 3054 receipt of the request.

3055 (4) TRANSFER BETWEEN PRIVATE FACILITIES.—An individual
 3056 being held ~~A patient~~ in a private facility or his or her ~~the~~
 3057 ~~patient's~~ guardian or guardian advocate may request the transfer
 3058 of the individual ~~patient~~ to another private facility at any
 3059 time, and the individual ~~patient~~ shall be transferred upon
 3060 acceptance of the individual ~~patient~~ by the facility to which
 3061 transfer is sought.

3062 Section 26. Section 394.469, Florida Statutes, is amended
 3063 to read:

3064 394.469 Discharge of involuntary placements ~~patients~~.—

3065 (1) POWER TO DISCHARGE.—At any time an individual ~~a~~
 3066 ~~patient~~ is found to no longer meet the criteria for involuntary
 3067 placement, the administrator shall:

3068 (a) Discharge the individual ~~patient~~, ~~unless the patient~~
 3069 ~~is under a criminal charge, in which case the patient shall be~~
 3070 ~~transferred to the custody of the appropriate law enforcement~~
 3071 ~~officer;~~

3072 (b) Transfer the individual ~~patient~~ to voluntary status on
 3073 his or her own authority or at the individual's ~~patient's~~
 3074 request, unless the individual ~~patient~~ is under criminal charge
 3075 or adjudicated incapacitated; or

3076 (c) Return an individual released from a receiving or
 3077 treatment facility on voluntary or involuntary status who is
 3078 charged with a crime to the custody of a law enforcement officer
 3079 ~~Place an improved patient, except a patient under a criminal~~
 3080 ~~charge, on convalescent status in the care of a community~~

HB 1213

2010

3081 facility.

3082 (2) NOTICE.—Notice of discharge or transfer of an
 3083 individual must be provided in accordance with a patient shall
 3084 ~~be given as provided in s. 394.4599.~~

3085 Section 27. Section 394.473, Florida Statutes, is amended
 3086 to read:

3087 394.473 Attorney's fee; expert witness fee.—

3088 (1) ~~In the case of an indigent person for whom~~ An attorney
 3089 ~~is~~ appointed to represent an indigent individual pursuant to the
 3090 provisions of this part, ~~the attorney~~ shall be compensated by
 3091 the state pursuant to s. 27.5304. ~~In the case of an indigent~~
 3092 ~~person, the court may appoint a public defender. A~~ The public
 3093 defender appointed to represent an indigent person may ~~shall~~
 3094 receive no additional compensation other than that usually paid
 3095 his or her office.

3096 (2) ~~An In the case of an indigent person for whom~~ expert
 3097 whose testimony is required for an indigent individual in a
 3098 court hearing pursuant to the provisions of this part ~~act, the~~
 3099 ~~expert~~, except one who is classified as a full-time employee of
 3100 the state or who is receiving remuneration from the state for
 3101 his or her time in attendance at the hearing, shall be
 3102 compensated by the state pursuant to s. 27.5304.

3103 Section 28. Section 394.475, Florida Statutes, is amended
 3104 to read:

3105 394.475 Acceptance, examination, and involuntary placement
 3106 ~~of Florida residents~~ from out-of-state mental health
 3107 authorities.—

3108 (1) Upon the request of the state mental health authority

HB 1213

2010

3109 of another state, the department may ~~is authorized to~~ accept an
 3110 individual as a patient, for up to ~~a period of not more than~~ 15
 3111 days, ~~a person~~ who is and has been a bona fide resident of this
 3112 state for at least ~~a period of not less than~~ 1 year.

3113 (2) An individual ~~Any person~~ received pursuant to
 3114 subsection (1) shall be examined by the staff of the state
 3115 facility where the individual ~~such patient~~ has been admitted
 3116 ~~accepted, which examination shall be completed~~ during the 15-day
 3117 period.

3118 (3) If, upon examination, the individual ~~such a person~~
 3119 requires continued involuntary placement, a petition for a
 3120 hearing regarding involuntary placement shall be filed with the
 3121 court of the county where ~~wherein~~ the treatment facility
 3122 receiving the individual ~~patient~~ is located or the county where
 3123 the individual ~~patient~~ is a resident.

3124 (4) During the pendency of the examination period and the
 3125 pendency of the involuntary placement proceedings, an individual
 3126 ~~such person~~ may continue to be held in the treatment facility
 3127 unless the court having jurisdiction enters an order to the
 3128 contrary.

3129 Section 29. Section 394.4785, Florida Statutes, is amended
 3130 to read:

3131 394.4785 Children and adolescents; admission and placement
 3132 in mental health facilities.—

3133 (1) A child or adolescent as defined in s. 394.492 may not
 3134 be admitted to a state-owned or state-operated mental health
 3135 treatment facility. A child may be admitted pursuant to s.
 3136 394.4625 or s. 394.467 to a crisis stabilization unit or a

HB 1213

2010

3137 residential treatment center licensed under this chapter or a
 3138 hospital licensed under chapter 395. The treatment center, unit,
 3139 or hospital must provide the least restrictive available
 3140 treatment that is appropriate to the ~~individual~~ needs of the
 3141 child or adolescent and must adhere to the guiding principles,
 3142 system of care, and service planning provisions of ~~contained in~~
 3143 part III of this chapter.

3144 (2) A child or adolescent, as defined in s. 394.492, who
 3145 is younger than ~~person under the age of~~ 14 years of age and who
 3146 is admitted to a ~~any~~ hospital licensed pursuant to ~~chapter 395~~
 3147 may not be admitted to a bed in a room or ward with an adult
 3148 ~~patient~~ in a mental health unit or share common areas with an
 3149 adult ~~patient~~ in a mental health unit. However, an adolescent ~~a~~
 3150 ~~person~~ 14 years of age or older may be admitted to a bed in a
 3151 room or ward in the mental health unit with an adult if the
 3152 admitting physician documents in the case record that such
 3153 placement is medically indicated or for reasons of safety. Such
 3154 placement shall be reviewed by the attending physician or a
 3155 designee or on-call physician each day and documented in the
 3156 clinical ~~case~~ record.

3157 Section 30. Subsection (2) of section 394.4786, Florida
 3158 Statutes, is amended to read:

3159 394.4786 Intent.—

3160 (2) Further, the Legislature intends that a specialty
 3161 psychiatric hospital that provides health care to specified
 3162 indigent individuals ~~patients~~ be eligible for reimbursement up
 3163 to the amount that hospital contributed to the Public Medical
 3164 Assistance Trust Fund in the previous fiscal year.

HB 1213

2010

3165 Section 31. Subsection (2) of section 394.47865, Florida
 3166 Statutes, is amended to read:

3167 394.47865 South Florida State Hospital; privatization.—

3168 (2) The contractor shall operate South Florida State
 3169 Hospital as a mental health treatment facility that serves
 3170 voluntarily and involuntarily committed indigent adult
 3171 individuals ~~adults~~ who meet the criteria of this part ~~I of this~~
 3172 ~~chapter~~ and who reside in the South Florida State Hospital
 3173 service area.

3174 (a) South Florida State Hospital shall remain a
 3175 participant in the mental health disproportionate share program
 3176 so long as such individuals ~~the residents~~ receive eligible
 3177 services.

3178 (b) The department and the contractor shall ensure that
 3179 the treatment facility is operated as a part of a total
 3180 continuum of care for individuals ~~persons~~ who are mentally ill.
 3181 The contractor shall have as its primary goal for the treatment
 3182 facility to effectively treat and assist individuals held at the
 3183 facility ~~residents~~ to return to the community as quickly as
 3184 possible.

3185 Section 32. Section 394.4787, Florida Statutes, is amended
 3186 to read:

3187 394.4787 Definitions; ~~ss. 394.4786, 394.4787, 394.4788,~~
 3188 ~~and 394.4789.~~—As used in ss. 394.4786-394.4789, the term ~~this~~
 3189 ~~section and ss. 394.4786, 394.4788, and 394.4789~~:

3190 (1) "Acute mental health services" means mental health
 3191 services provided through inpatient hospitalization.

3192 (2) "Agency" means the Agency for Health Care

HB 1213

2010

3193 Administration.

3194 (3) "Charity care" means that portion of hospital charges
 3195 for care provided to an individual ~~a patient~~ whose family income
 3196 for the 12 months preceding the determination is equal to or
 3197 below 150 percent of the current federal nonfarm poverty
 3198 guideline or the amount of hospital charges due from the
 3199 individual ~~patient~~ which exceeds 25 percent of the annual family
 3200 income and for which there is no compensation. Charity care does
 3201 ~~shall~~ not include administrative or courtesy discounts,
 3202 contractual allowances to third party payors, or failure of a
 3203 hospital to collect full charges due to partial payment by
 3204 governmental programs.

3205 (4) "Indigent" means an individual whose financial status
 3206 would qualify him or her for charity care.

3207 (5) "Operating expense" means all common and accepted
 3208 costs appropriate in developing and maintaining the operating of
 3209 the patient care facility and its activities.

3210 (6) "PMATF" means the Public Medical Assistance Trust
 3211 Fund.

3212 (7) "Specialty psychiatric hospital" has the same meaning
 3213 as in ~~means a hospital licensed by the agency pursuant to s.~~
 3214 395.002(28), and includes facilities licensed under ~~and~~ part II
 3215 of chapter 408 as a specialty psychiatric hospital.

3216 Section 33. Subsections (1), (2), and (6) of section
 3217 394.4788, Florida Statutes, are amended to read:

3218 394.4788 Use of certain PMATF funds for the purchase of
 3219 acute care mental health services.—

3220 (1) A hospital may be eligible to be reimbursed an amount

HB 1213

2010

3221 no greater than the hospital's previous year contribution to the
 3222 PMATF for acute mental health services provided to indigent
 3223 individuals who are mentally ill ~~persons~~ who have been
 3224 determined by the agency or its agent to require such treatment
 3225 and who:

3226 (a) Do not meet Medicaid eligibility criteria, unless the
 3227 agency makes a referral for a Medicaid eligible individual
 3228 ~~patient~~ pursuant to s. 394.4789;

3229 (b) Meet the criteria for mental illness under this part;
 3230 and

3231 (c) Meet the definition of charity care.

3232 (2) The agency shall annually calculate a per diem
 3233 reimbursement rate for each specialty psychiatric hospital to be
 3234 paid to the specialty psychiatric hospitals for the provision of
 3235 acute mental health services provided to indigent individuals
 3236 who are mentally ill individuals ~~patients~~ who meet the criteria
 3237 in subsection (1). After the first rate period, providers shall
 3238 be notified of new reimbursement rates for each new state fiscal
 3239 year by June 1. The new reimbursement rates ~~shall~~ commence on
 3240 July 1.

3241 (6) Hospitals that agree to participate in the program set
 3242 forth in this section and ss. 394.4786, 394.4787, and 394.4789
 3243 shall agree that payment from the PMATF is payment in full for
 3244 all individuals ~~patients~~ for which reimbursement is received
 3245 under this section and ss. 394.4786, 394.4787, and 394.4789,
 3246 until the funds for this program are no longer available.

3247 Section 34. Section 394.4789, Florida Statutes, is amended
 3248 to read:

HB 1213

2010

3249 | 394.4789 Establishment of referral process and eligibility
3250 | determination.—

3251 | (1) The department shall adopt by rule a referral process
3252 | that provides ~~which shall provide~~ each participating specialty
3253 | psychiatric hospital with a system for accepting ~~into the~~
3254 | ~~hospital's care~~ indigent individuals who are mentally ill
3255 | ~~persons~~ referred by the department. It is the intent of the
3256 | Legislature that a hospital that ~~which~~ seeks payment under s.
3257 | 394.4788 shall accept referrals from the department. However, a
3258 | hospital may ~~shall have the right to~~ refuse the admission of an
3259 | individual ~~a patient~~ due to lack of functional bed space or lack
3260 | of services appropriate to a patient's specific treatment and is
3261 | not ~~no hospital shall be~~ required to accept referrals if the
3262 | costs for treating the referred patient are no longer
3263 | reimbursable because the hospital has reached the level of
3264 | contribution made to the PMATF in the previous fiscal year.
3265 | Furthermore, a hospital that does not seek compensation for
3266 | indigent individuals who are mentally ill ~~patients~~ under the
3267 | provisions of this part is ~~act shall~~ not be obliged to accept
3268 | department referrals, notwithstanding any agreements it may have
3269 | entered into with the department. The right of refusal in this
3270 | subsection does ~~shall~~ not affect a hospital's requirement to
3271 | provide emergency care pursuant to s. 395.1041 or other state or
3272 | federal law ~~statutory requirements related to the provision of~~
3273 | ~~emergency care.~~

3274 | (2) The department shall adopt by rule a patient
3275 | eligibility form and is ~~shall be~~ responsible for eligibility
3276 | determination. However, the department may contract with

3277 participating psychiatric hospitals for eligibility
 3278 determination. The eligibility form must ~~shall~~ provide the
 3279 mechanism for determining a patient's eligibility according to
 3280 the requirements of s. 394.4788(1).

3281 (a) A specialty psychiatric hospital is ~~shall be~~ eligible
 3282 for reimbursement only if ~~when~~ an eligibility form has been
 3283 completed for each indigent individual who is mentally ill
 3284 ~~person~~ for whom reimbursement is sought.

3285 (b) As part of eligibility determination, every effort
 3286 shall be made by the hospital to determine if any third party
 3287 insurance coverage is available.

3288 Section 35. Paragraph (a) of subsection (3) of section
 3289 39.407, Florida Statutes, is amended to read:

3290 39.407 Medical, psychiatric, and psychological examination
 3291 and treatment of child; physical, mental, or substance abuse
 3292 examination of person with or requesting child custody.—

3293 (3) (a) 1. Except as ~~otherwise~~ provided in subparagraph
 3294 (b) 1. or paragraph (e), before the department provides
 3295 psychotropic medications to a child in its custody, the
 3296 prescribing physician shall attempt to obtain express and
 3297 informed consent, as defined in s. 394.455 ~~394.455(9)~~ and as
 3298 described in s. 394.459(3) ~~394.459(3)(a)~~, from the child's
 3299 parent or legal guardian. The department shall ~~must take steps~~
 3300 ~~necessary to~~ facilitate the inclusion of the parent in the
 3301 child's consultation with the physician. However, if the
 3302 parental rights of the parent have been terminated, the parent's
 3303 location or identity is unknown or cannot reasonably be
 3304 ascertained, or the parent declines to give express and informed

HB 1213

2010

3305 consent, the department may, after consultation with the
 3306 prescribing physician, seek court authorization to provide the
 3307 psychotropic medications to the child. Unless parental rights
 3308 have been terminated and if it is possible to do so, the
 3309 department shall continue to involve the parent in the
 3310 decisionmaking process regarding the provision of psychotropic
 3311 medications. If, at any time, a parent whose parental rights
 3312 have not been terminated provides express and informed consent
 3313 to the provision of a psychotropic medication, the requirements
 3314 of this section that the department seek court authorization do
 3315 not apply to that medication until such time as the parent no
 3316 longer consents.

3317 2. If ~~Any time~~ the department seeks a medical evaluation
 3318 to determine the need to initiate or continue a psychotropic
 3319 medication for a child, the department must provide to the
 3320 evaluating physician all pertinent medical information known to
 3321 the department concerning that child.

3322 Section 36. Subsection (3) of section 394.495, Florida
 3323 Statutes, is amended to read:

3324 394.495 Child and adolescent mental health system of care;
 3325 programs and services.—

3326 (3) Assessments shall ~~must~~ be performed by:

3327 (a) A clinical psychologist, clinical social worker,
 3328 physician, psychiatric nurse, or psychiatrist ~~professional~~ as
 3329 defined in s. 394.455 ~~394.455(2), (4), (21), (23), or (24);~~

3330 (b) A professional licensed under chapter 491; or

3331 (c) A person who is under the direct supervision of a
 3332 professional listed in paragraph (a) or paragraph (b) ~~as defined~~

HB 1213

2010

3333 ~~in s. 394.455(2), (4), (21), (23), or (24) or a professional~~
 3334 ~~licensed under chapter 491.~~

3335
 3336 The department shall adopt by rule statewide standards for
 3337 mental health assessments, which are ~~must be~~ based on current
 3338 relevant professional and accreditation standards.

3339 Section 37. Subsection (6) of section 394.496, Florida
 3340 Statutes, is amended to read:

3341 394.496 Service planning.—

3342 (6) A clinical psychologist, clinical social worker,
 3343 physician, psychiatric nurse, or psychiatrist ~~professional~~ as
 3344 defined in s. 394.455, ~~394.455(2), (4), (21), (23), or (24)~~ or a
 3345 professional licensed under chapter 491, must be included among
 3346 those persons developing the services plan.

3347 Section 38. Subsection (6) of section 394.9085, Florida
 3348 Statutes, is amended to read:

3349 394.9085 Behavioral provider liability.—

3350 (6) For purposes of this section, the terms
 3351 "detoxification services," "addictions receiving facility," and
 3352 "receiving facility" have the same meanings as ~~those~~ provided in
 3353 ss. 397.311(18)(a)4., 397.311(18)(a)1., and 394.455 ~~394.455(26),~~
 3354 respectively.

3355 Section 39. Paragraph (d) of subsection (1) of section
 3356 419.001, Florida Statutes, is amended to read:

3357 419.001 Site selection of community residential homes.—

3358 (1) For the purposes of this section, the following
 3359 definitions shall apply:

3360 (d) "Resident" means any of the following: a frail elder

HB 1213

2010

3361 as defined in s. 429.65; a physically disabled or handicapped
 3362 person as defined in s. 760.22(7)(a); a developmentally disabled
 3363 person as defined in s. 393.063; a nondangerous individual who
 3364 has a mental illness as defined in s. 394.455 ~~mentally ill~~
 3365 ~~person as defined in s. 394.455(18)~~; or a child who is found to
 3366 be dependent as defined in s. 39.01 or s. 984.03, or a child in
 3367 need of services as defined in s. 984.03 or s. 985.03.

3368 Section 40. Subsection (7) of section 744.704, Florida
 3369 Statutes, is amended to read:

3370 744.704 Powers and duties.—

3371 (7) A public guardian may ~~shall~~ not commit a ward to a
 3372 mental health treatment facility, as defined in s. 394.455
 3373 ~~394.455(32)~~, without an involuntary placement proceeding as
 3374 provided by law.

3375 Section 41. This act shall take effect July 1, 2010.