

By Senator Storms

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1 A bill to be entitled
2 An act relating to mental health; revising part I of
3 ch. 394, F.S., relating to the Florida Mental Health
4 Act, to substitute the term "individual" for the terms
5 "person," "patient," or "client"; amending s. 394.453,
6 F.S.; conforming terms; amending s. 394.455, F.S.;
7 redefining terms, defining new terms, and deleting
8 terms; amending s. 394.457, F.S.; conforming terms;
9 amending s. 394.4572, F.S.; conforming terms; deleting
10 certain background screening requirements and
11 exemptions for certain mental health professionals;
12 amending s. 394.4573, F.S.; conforming terms; deleting
13 a report requirement relating to the implementation of
14 staffing standards in state treatment facilities;
15 amending ss. 394.4574 and 394.458, F.S.; conforming
16 terms; amending s. 394.459, F.S.; conforming terms;
17 revising requirements for a physical examination and
18 psychiatric evaluation and requiring the examination
19 to be documented in the clinical record; requiring
20 facilities to provide procedures for reporting events
21 that place individuals receiving services at risk of
22 harm; requiring facilities to provide information and
23 assist individuals with advance directives; amending
24 ss. 394.4593 and 394.4595, F.S.; conforming terms;
25 amending s. 394.4597, F.S.; conforming terms; adding a
26 health care surrogate to list of persons to be noted
27 in clinical record; specifying the rights, authority,
28 and responsibilities of a representative; amending s.
29 394.4598, F.S.; conforming terms; requiring a guardian

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30 advocate to make every effort to make the decision the
31 individual would have made; amending s. 394.4599,
32 F.S.; conforming terms; adding the health care
33 surrogate or proxy to list of persons to receive
34 notice of involuntary admission; repealing s. 394.460,
35 F.S., relating to the rights of professionals;
36 amending s. 394.461, F.S.; conforming terms;
37 specifying that only governmental facilities may serve
38 as receiving and treatment facilities; revising
39 facility data that must be submitted to the Agency for
40 Health Care Administration; amending s. 394.4615,
41 F.S.; conforming terms; adding a health care surrogate
42 or proxy to list of persons that may waive
43 confidentiality of a clinical record; providing
44 additional grounds for releasing a clinical record;
45 amending s. 394.462, F.S.; conforming terms; providing
46 that a law enforcement officer acting in good faith
47 may not be held liable for false imprisonment;
48 specifying when a county or law enforcement agency may
49 be reimbursed for transportation expenses; authorizing
50 the Department of Corrections to transport an
51 individual under certain circumstances; amending s.
52 394.4625, F.S.; conforming terms; requiring a minor's
53 assent to voluntary admission; requiring an individual
54 who has been voluntarily admitted and charged with a
55 crime to be returned to the custody of a law
56 enforcement agency after discharge; amending s.
57 394.463, F.S.; conforming terms; requiring an ex parte
58 order for involuntary examination to be based on

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

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88 Division of Administrative Hearings to inform an
89 individual of his or her right to an independent
90 expert examination; amending ss. 394.46715 and
91 394.4672, F.S.; conforming terms; repealing s.
92 394.4674, F.S., relating to a plan and report on the
93 deinstitutionalization of patients in treatment
94 facilities; amending s. 394.4685, F.S.; conforming
95 terms; authorizing a public facility to request the
96 transfer of an individual to a private facility;
97 amending s. 394.469, F.S.; conforming terms; requiring
98 a discharged individual who is charged with a crime to
99 be returned to the custody of a law enforcement
100 agency; amending ss. 394.473, 394.475, 394.4785,
101 394.4786, 394.47865, 394.4787, 394.4788, and 394.4789,
102 F.S.; conforming terms; amending ss. 39.407, 394.495,
103 394.496, 394.9085, 419.001, and 744.704, F.S.;
104 conforming cross-references; providing an effective
105 date.

106
107 Be It Enacted by the Legislature of the State of Florida:

108
109 Section 1. Section 394.453, Florida Statutes, is amended to
110 read:

111 394.453 Legislative intent.—It is the intent of the
112 Legislature to authorize and direct the Department of Children
113 and Family Services to evaluate, research, plan, and recommend
114 to the Governor and the Legislature programs designed to reduce
115 the occurrence, severity, duration, and disabling aspects of
116 mental, emotional, and behavioral disorders. It is the intent of

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

145 Section 2. Section 394.455, Florida Statutes, is amended to

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146 read:

147 394.455 Definitions.—As used in this part, ~~unless the~~
148 ~~context clearly requires otherwise,~~ the term:

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

151 (2) "Adult" means an individual who is 18 years of age or
152 older or who has had the disabilities of nonage removed pursuant
153 to s. 743.01 or s. 743.015.

154 (3) "Advance directive" has the same meaning as in s.
155 765.101.

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

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

170 (6)~~(4)~~ "Clinical social worker" has the same meaning as in
171 s. 491.003 ~~means a person licensed as a clinical social worker~~
172 ~~under chapter 491.~~

173 (7)~~(5)~~ "Community facility" means a ~~any~~ community service
174 provider contracting with the department to furnish substance

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175 abuse or mental health services under part IV of this chapter.

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

180 (9)~~(7)~~ "Court," unless otherwise specified, means the
181 circuit court.

182 (10)~~(8)~~ "Department" means the Department of Children and
183 Family Services.

184 (11) "Electronic means" means a form of telecommunication
185 that requires all parties to maintain visual as well as audio
186 communication.

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

193 (13)~~(10)~~ "Facility" means a ~~any~~ hospital, community
194 facility, public or private facility, or receiving or treatment
195 facility providing for the evaluation, diagnosis, care,
196 treatment, training, or hospitalization of individuals ~~persons~~
197 who appear to have a ~~mental illness~~ or who have been diagnosed
198 as having a mental illness. The term "Facility" does not include
199 a ~~any~~ program or entity licensed under ~~pursuant to~~ chapter 400
200 or chapter 429.

201 (14) "Government facility" means a facility owned,
202 operated, or administered by the Department of Corrections or
203 the United States Department of Veterans Affairs.

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

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

214 (17)~~(13)~~ "Hospital" means a hospital ~~facility as defined in~~
215 ~~s. 395.002 and~~ licensed under chapter 395 and part II of chapter
216 408.

217 (18)~~(14)~~ "Incapacitated" means that an individual ~~a person~~
218 has been adjudicated incapacitated pursuant to part V of chapter
219 744 and a guardian of the person has been appointed.

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

225 (20) "Involuntary examination" means an examination
226 performed under s. 394.463 to determine if an individual
227 qualifies for involuntary inpatient treatment under s. 394.467
228 or involuntary outpatient treatment under s. 394.4655.

229 (21) "Involuntary placement" means involuntary outpatient
230 treatment pursuant to s. 394.4655 or involuntary inpatient
231 treatment pursuant to s. 394.467.

232 (22)~~(16)~~ "Law enforcement officer" has the same meaning as

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233 ~~means a law enforcement officer as defined in s. 943.10.~~

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

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

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

250 (26)~~(18)~~ "Mental illness" means an impairment of the mental
251 or emotional processes that exercise conscious control of one's
252 actions or of the ability to perceive or understand reality,
253 which impairment substantially interferes with the ~~a person's~~
254 ability to meet the ordinary demands of living, ~~regardless of~~
255 ~~etiology~~. For the purposes of this part, the term does not
256 include a ~~retardation or~~ developmental disability as defined in
257 chapter 393, intoxication, brain injury, dementia, or conditions
258 manifested only by antisocial behavior or substance abuse
259 impairment.

260 (27) "Minor" means an individual who is 17 years of age or
261 younger and who has not had the disabilities of nonage removed

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262 pursuant to s. 743.01 or s. 743.015.

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

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

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

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

281 ~~(31)-(22)~~ "Private facility" means any hospital or facility
282 operated by a for-profit or not-for-profit corporation or
283 association that provides mental health services and is not a
284 public facility.

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

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291 ~~post-master's clinical experience under the supervision of a~~
292 ~~physician.~~

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

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

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

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

312 (37)~~(28)~~ (a) "Restraint" means a physical device, method, or
313 drug used to control behavior.

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

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

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320 control an individual's ~~the person's~~ behavior or to restrict his
321 or her freedom of movement and is not part of the standard
322 treatment regimen for an individual having ~~of a person with~~ a
323 diagnosed mental illness ~~who is a client of the department~~.
324 Physically holding an individual ~~a person~~ during a procedure to
325 forcibly administer psychotropic medication is a physical
326 restraint.

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

335 ~~(38)(29)~~ "Seclusion" means the physical segregation ~~of a~~
336 ~~person in any fashion~~ or involuntary isolation of an individual
337 ~~a person~~ in a room or area from which the individual ~~person~~ is
338 prevented from leaving. The prevention may be by physical
339 barrier or by a staff member who is acting in a manner, or who
340 is physically situated, so as to prevent the individual ~~person~~
341 from leaving the room or area. For purposes of this chapter, the
342 term does not mean isolation due to an individual's ~~a person's~~
343 medical condition or symptoms.

344 ~~(39)(30)~~ "Secretary" means the Secretary of Children and
345 Family Services.

346 ~~(40)~~ "Service provider" means a public or private receiving
347 facility, an entity under contract with the department to
348 provide mental health services, a community mental health center

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349 or clinic, a clinical psychologist, a clinical social worker, a
350 marriage and family therapist, a mental health counselor, a
351 physician, or a psychiatric nurse.

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

361 ~~(42)(32)~~ "Treatment facility" means a ~~any~~ state-owned,
362 state-operated, or state-supported hospital, or a community
363 mental health center, or clinic, designated by the department
364 for extended treatment and hospitalization of individuals who
365 have a mental illness, ~~beyond that provided for by a receiving~~
366 facility or a, ~~of persons who have a mental illness, including~~
367 ~~facilities of the United States Government, and any private~~
368 facility designated by the department when rendering such
369 services ~~to a person pursuant to the provisions of this part.~~
370 ~~Patients treated in facilities of the United States Government~~
371 ~~shall be solely those whose care is the responsibility of the~~
372 ~~United States Department of Veterans Affairs.~~

373 ~~(33)~~ "Service provider" ~~means any public or private~~
374 ~~receiving facility, an entity under contract with the department~~
375 ~~of Children and Family Services to provide mental health~~
376 ~~services, a clinical psychologist, a clinical social worker, a~~
377 ~~marriage and family therapist, a mental health counselor, a~~

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378 ~~physician, a psychiatric nurse as defined in subsection (23), or~~
379 ~~a community mental health center or clinic as defined in this~~
380 ~~part.~~

381 ~~(34) "Involuntary examination" means an examination~~
382 ~~performed under s. 394.463 to determine if an individual~~
383 ~~qualifies for involuntary inpatient treatment under s.~~
384 ~~394.467(1) or involuntary outpatient treatment under s.~~
385 ~~394.4655(1).~~

386 ~~(35) "Involuntary placement" means either involuntary~~
387 ~~outpatient treatment pursuant to s. 394.4655 or involuntary~~
388 ~~inpatient treatment pursuant to s. 394.467.~~

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

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

393 ~~(38) "Electronic means" means a form of telecommunication~~
394 ~~that requires all parties to maintain visual as well as audio~~
395 ~~communication.~~

396 Section 3. Section 394.457, Florida Statutes, is amended to
397 read:

398 394.457 Operation and administration.-

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

404 (2) RESPONSIBILITIES OF THE DEPARTMENT.-The department is
405 responsible for:

406 (a) The planning, evaluation, and implementation of a

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

422 (b) The publication and distribution of an information
423 handbook to facilitate the understanding of ~~this part,~~ the
424 policies and procedures involved in the implementation of this
425 part, and the responsibilities of the various service providers
426 ~~of services~~ under this part. The department ~~It~~ shall stimulate
427 research by public and private agencies, institutions of higher
428 learning, and hospitals in the interest of the elimination and
429 amelioration of mental illness.

430 (3) POWER TO CONTRACT.—The department may contract to
431 provide, and be provided with, services and facilities in order
432 to carry out its responsibilities under this part with respect
433 to the following agencies: public and private hospitals;
434 receiving and treatment facilities; clinics; laboratories;
435 departments, divisions, and other units of state government; ~~the~~

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436 state colleges and universities; ~~the~~ community colleges; private
437 colleges and universities; counties, municipalities, and ~~any~~
438 other political subdivisions ~~governmental unit~~, including
439 facilities of the United States Government; and any other public
440 or private entity that ~~which~~ provides or needs facilities or
441 services. Baker Act funds for community inpatient, crisis
442 stabilization, short-term residential treatment, and screening
443 services under this part must be allocated to each county
444 pursuant to the department's funding allocation methodology.
445 Notwithstanding ~~the provisions of~~ s. 287.057(5)(f), contracts
446 for community-based Baker Act services for inpatient, crisis
447 stabilization, short-term residential treatment, and screening
448 ~~provided~~ under this part, other than those with other units of
449 government, ~~to be provided for the department~~ must be awarded
450 using competitive solicitation if sealed bids ~~when~~ the county
451 commission of the county receiving the services makes a request
452 to the department's circuit ~~district~~ office by January 15 of the
453 contracting year. The office may ~~district shall~~ not enter into a
454 competitively bid contract ~~under this provision~~ if such action
455 will result in increases of state or local expenditures for
456 Baker Act services within the circuit ~~district~~. Contracts for
457 ~~these~~ Baker Act services using competitive sealed bids are ~~will~~
458 ~~be~~ effective for 3 years. The department shall adopt rules
459 establishing minimum standards for such contracted services and
460 facilities and shall make periodic audits and inspections to
461 assure that the contracted services are provided and meet the
462 standards of the department.

463 (4) APPLICATION FOR AND ACCEPTANCE OF GIFTS AND GRANTS.—The
464 department may apply for and accept any funds, grants, gifts, or

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465 services made available to it by any agency or department of the
 466 Federal Government or any other public or private agency or
 467 person ~~individual~~ in aid of mental health programs. All such
 468 moneys must ~~shall~~ be deposited in the State Treasury and ~~shall~~
 469 ~~be~~ disbursed as provided by law.

470 (5) RULES. ~~The department shall adopt rules:~~

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

475 (b) ~~The department shall adopt rules~~ Necessary for the
 476 implementation and administration of the provisions of this
 477 part, ~~and~~ A program subject to ~~the provisions of~~ this part may
 478 ~~shall not be permitted to~~ operate unless rules designed to
 479 ensure the protection of the health, safety, and welfare of the
 480 individuals examined and patients treated under ~~through~~ such
 481 program have been adopted. Such rules ~~adopted under this~~
 482 ~~subsection~~ must include provisions governing the use of
 483 restraint and seclusion which are consistent with recognized
 484 best practices and professional judgment; prohibit inherently
 485 dangerous restraint or seclusion procedures; establish
 486 limitations on the use and duration of restraint and seclusion;
 487 establish measures to ensure the safety of program participants
 488 and staff during an incident of restraint or seclusion;
 489 establish procedures for staff to follow before, during, and
 490 after incidents of restraint or seclusion; establish
 491 professional qualifications ~~of~~ and training for staff who may
 492 order or be engaged in the use of restraint or seclusion; and
 493 establish mandatory reporting, data collection, and data

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494 dissemination procedures and requirements. Such rules ~~adopted~~
495 ~~under this subsection~~ must require that each instance of the use
496 of restraint or seclusion be documented in the clinical record
497 of the individual who has been restrained or secluded ~~patient~~.

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

501 (6) PERSONNEL.—

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

506 (b) The department shall design and distribute appropriate
507 materials for the orientation and training of persons actively
508 engaged in implementing the provisions of this part relating to
509 the involuntary examination and placement of individuals ~~persons~~
510 who are believed to have a mental illness.

511 (7) PAYMENT FOR CARE ~~OF PATIENTS~~.—Fees and fee collections
512 for individuals receiving treatment or services ~~patients~~ in
513 state-owned, state-operated, or state-supported treatment
514 facilities must shall be in accordance with ~~according to~~ s.
515 402.33.

516 Section 4. Section 394.4572, Florida Statutes, is amended
517 to read:

518 394.4572 Screening of mental health personnel.—

519 (1) ~~(a)~~ The department and the Agency for Health Care
520 Administration shall require employment screening for mental
521 health personnel using ~~the standards for~~ level 2 screening
522 standards provided in s. 435.04 set forth in chapter 435.

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523 "Mental health personnel" includes all program directors,
524 professional clinicians, staff members, and volunteers working
525 in public or private mental health programs and facilities who
526 have direct contact with individuals held for examination or
527 admitted for mental health treatment ~~unmarried patients under~~
528 ~~the age of 18 years. For purposes of this chapter, employment~~
529 ~~screening of mental health personnel shall also include, but is~~
530 ~~not limited to, employment screening as provided under chapter~~
531 ~~435.~~

532 (a) ~~(b)~~ Students in the health care professions who are
533 interning in a mental health facility licensed under chapter
534 395, where the primary purpose of the facility is not the
535 treatment of minors, are exempt from the fingerprinting and
536 screening requirements if, ~~provided~~ they are under direct
537 supervision in the actual physical presence of a licensed health
538 care professional.

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

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

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

555 (3) Prospective mental health personnel who have previously
556 been fingerprinted or screened pursuant to this chapter, chapter
557 393, chapter 397, chapter 402, or chapter 409, or teachers who
558 have been fingerprinted pursuant to chapter 1012, who have not
559 been unemployed for more than 90 days thereafter, and who under
560 the penalty of perjury attest to ~~the~~ completion of such
561 fingerprinting or screening and to compliance with the
562 provisions of this section and the standards for level 1
563 screening under ~~contained in~~ chapter 435, are ~~shall~~ not be
564 required to be refingerprinted or rescreened in order to comply
565 with the ~~any~~ screening requirements of this part.

566 Section 5. Section 394.4573, Florida Statutes, is amended
567 to read:

568 394.4573 Continuity of care management system; measures of
569 performance; reports.—

570 (1) For the purposes of this section:

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

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

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

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

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

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

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

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610 ~~services has~~ client ~~will have~~ a client ~~central~~ record.

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

615 (d) Require a ~~that any~~ public receiving facility initiating
616 an individual's ~~a patient~~ transfer to a licensed hospital for
617 acute care mental health services not accessible through the
618 public receiving facility to ~~shall~~ notify the hospital of the
619 ~~such~~ transfer and send all records relating to the emergency
620 psychiatric or medical condition.

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

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

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

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

644 (2) The department must ensure that:

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

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

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668 services during evenings, weekends, and holidays; supervision of
669 the clinical needs of the residents; and access to emergency
670 psychiatric care.

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

673 394.458 Introduction or removal of certain articles
674 unlawful; penalty.-

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

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

- 684 1. An ~~Any~~ intoxicating beverage or beverage that ~~which~~
685 causes or may cause an intoxicating effect;
- 686 2. A ~~Any~~ controlled substance as defined in chapter 893; or
- 687 3. A firearm ~~Any firearms~~ or deadly weapon.

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

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

699 394.459 Rights of individuals receiving treatment and
700 services patients.—

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

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

721 (a) May ~~A person~~ ~~shall~~ not be denied treatment for mental
722 illness, and services may ~~shall~~ not be delayed at a receiving or
723 treatment facility because of inability to pay. However, every
724 reasonable effort to collect appropriate reimbursement for the
725 cost of providing mental health services from individuals ~~to~~

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726 ~~persons~~ able to pay for services, including insurance or third-
727 party payers ~~payments~~, shall be made by facilities providing
728 services under ~~pursuant to~~ this part.

729 (b) Shall be provided ~~It is further the policy of the state~~
730 ~~that~~ the least restrictive appropriate available treatment, be
731 ~~utilized~~ based on the individual's ~~individual~~ needs and best
732 interests, ~~of the patient~~ and consistent with the optimum
733 improvement of the individual's ~~patient's~~ condition.

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

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

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

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

754 (a) ~~1.~~ Each individual ~~patient~~ entering treatment shall be

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755 asked to give express and informed consent for admission or
756 treatment.

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

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

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

791 (b) Before performing a medical procedure ~~In the case of~~
792 ~~medical procedures~~ requiring the use of a general anesthetic or
793 electroconvulsive treatment, ~~and prior to performing the~~
794 ~~procedure,~~ express and informed consent must ~~shall~~ be obtained
795 from the individual subject to the procedure ~~patient~~ if the
796 individual ~~patient~~ is legally competent, from the guardian of a
797 minor ~~patient,~~ from the guardian of an individual ~~a patient~~ who
798 has been adjudicated incapacitated, or from the individual's
799 guardian advocate ~~of the patient~~ if the guardian advocate has
800 been given express court authority to consent to medical
801 procedures or electroconvulsive treatment as provided under s.
802 394.4598.

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

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

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

826 (4) QUALITY OF TREATMENT.—

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

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

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

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

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

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

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

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

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

870 c. The unauthorized departure or absence of an individual

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871 from a facility in which he or she has been held for involuntary
872 examination or involuntary placement.

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

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

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

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

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

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900 The facility may establish reasonable rules for the use of this
901 telephone which, ~~provided that the rules~~ do not interfere with
902 an individual's ~~a patient's~~ access to a telephone to report
903 abuse pursuant to paragraph (e).

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

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

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929 restriction must ~~of a patient's right to communicate or to~~
930 ~~receive visitors shall~~ be reviewed at least every 7 days. The
931 right to communicate or receive visitors may ~~shall~~ not be
932 restricted as a means of punishment. ~~Nothing in~~ This paragraph
933 does not shall be construed to limit the provisions of paragraph
934 (d).

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

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

952 (f) The department shall adopt rules providing a procedure
953 for reporting abuse. Facility staff ~~shall be required,~~ as a
954 condition of employment, must ~~to~~ become familiar with the
955 requirements and procedures for ~~the~~ reporting ~~of~~ abuse.

956 (6) CARE AND CUSTODY OF PERSONAL EFFECTS ~~OF PATIENTS.~~ The
957 rights of an individual held for examination or admitted for

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

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987 representative.

988 (7) VOTING IN PUBLIC ELECTIONS.—An individual ~~A patient~~ who
989 is eligible to vote according to the laws of the state, and who
990 has not been declared incompetent to proceed under chapter 916,
991 has the right to vote in the primary and general elections. The
992 department shall establish rules to enable such individuals
993 ~~patients~~ to obtain voter registration forms, applications for
994 absentee ballots, and absentee ballots.

995 (8) HABEAS CORPUS.—

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

1005 (b) At any time, and without notice, an individual admitted
1006 for mental health treatment ~~a person who is a patient~~ in a
1007 receiving or treatment facility, or a relative, friend,
1008 guardian, guardian advocate, representative, or attorney, or the
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 herein or
1013 that a procedure authorized herein is being abused. Upon the
1014 filing of such a petition, the court may ~~shall have the~~
1015 ~~authority to~~ conduct a judicial inquiry and ~~to~~ issue an ~~any~~

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1016 order ~~needed~~ to correct an abuse of the provisions of this part.

1017 (c) The administrator of any receiving or treatment
1018 facility receiving a petition under this subsection shall file
1019 the petition with the clerk of the court on the next court
1020 working day.

1021 (d) A ~~No~~ fee may not ~~shall~~ be charged for ~~the~~ filing ~~of~~ a
1022 petition under this subsection.

1023 (9) VIOLATIONS.—The department shall report to the Agency
1024 for Health Care Administration any violation of the rights or
1025 privileges of individuals ~~patients~~, or of any procedures
1026 provided under this part, by any facility or professional
1027 licensed or regulated by the agency. The agency may ~~is~~
1028 ~~authorized to~~ impose any sanction authorized for violation of
1029 this part, based solely on the investigation and findings of the
1030 department.

1031 (10) LIABILITY FOR VIOLATIONS.—Any person who violates or
1032 abuses the any rights or privileges of individuals held for
1033 examination or admitted for mental health treatment ~~patients~~
1034 provided under ~~by~~ this part is liable for damages as determined
1035 by law. Any person who acts reasonably, in good faith, and
1036 without negligence in compliance with ~~the provisions of~~ this
1037 part is immune from civil or criminal liability for his or her
1038 actions in connection with the preparation or execution of
1039 petitions, applications, certificates, reports, or other
1040 documents initiating admission to a facility or the
1041 apprehension, detention, transportation, examination, admission,
1042 diagnosis, treatment, or discharge of an individual ~~a patient~~ to
1043 or from a facility. ~~However, this section does not relieve any~~
1044 ~~person from liability if such person commits negligence.~~

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1045 (11) RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE
1046 PLANNING.—An individual held for examination or admitted for
1047 mental health treatment ~~The patient~~ shall have the opportunity
1048 to participate in treatment and discharge planning and shall be
1049 notified in writing of his or her right, upon discharge from the
1050 facility, to seek treatment from the professional or agency of
1051 the individual's ~~patient's~~ choice.

1052 (12) ADVANCE DIRECTIVES.—All receiving and treatment
1053 facilities and other service providers shall provide information
1054 concerning advance directives, and assist individuals who are
1055 competent and willing to complete an advance directive. The
1056 directive may include instructions regarding mental health care.
1057 Receiving and treatment facilities and service providers must
1058 honor the advance directive of an individual admitted to or
1059 served by the facility or provider.

1060 (13) ~~(12)~~ POSTING OF NOTICE OF RIGHTS OF PATIENTS.—Each
1061 facility shall post a notice, which lists and describes in
1062 listing and describing, in the language and terminology that the
1063 individual persons to whom the notice is addressed can
1064 understand, of the rights provided in this section. This notice
1065 must shall include a statement that provisions of the federal
1066 Americans with Disabilities Act apply and the name and telephone
1067 number of a person to contact for further information. The This
1068 notice must shall be posted in a place readily accessible to
1069 ~~patients~~ and in a format easily seen by the individuals served
1070 ~~patients~~. The This notice must shall include the telephone
1071 numbers of the Florida local advocacy council and Advocacy
1072 Center for Persons with Disabilities, Inc.

1073 Section 9. Subsections (1), (2), (3), and (4) of section

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1074 394.4593, Florida Statutes, are amended to read:

1075 394.4593 Sexual misconduct prohibited; reporting required;
1076 penalties.—

1077 (1) As used in this section, the term:

1078 (a) "Employee" includes any paid staff member, volunteer,
1079 or intern of the department; any person under contract with the
1080 department; and any person providing care or support to an
1081 individual ~~a client~~ on behalf of the department or its service
1082 providers.

1083 (b) "Sexual activity" means:

1084 1. Fondling the genital area, groin, inner thighs,
1085 buttocks, or breasts of an individual ~~a person~~.

1086 2. The oral, anal, or vaginal penetration by or union with
1087 the sexual organ of another or the anal or vaginal penetration
1088 of another by any other object.

1089 3. Intentionally touching in a lewd or lascivious manner
1090 the breasts, genitals, the genital area, or buttocks, or the
1091 clothing covering them, of an individual ~~a person~~, or forcing or
1092 enticing an individual ~~a person~~ to touch the perpetrator.

1093 4. Intentionally masturbating in the presence of another
1094 person.

1095 5. Intentionally exposing the genitals in a lewd or
1096 lascivious manner in the presence of another individual ~~person~~.

1097 6. Intentionally committing any other sexual act that does
1098 not involve actual physical or sexual contact with another
1099 individual ~~the victim~~, including, but not limited to,
1100 sadomasochistic abuse, sexual bestiality, or the simulation of
1101 any act involving sexual activity in the presence of the
1102 individual ~~a victim~~.

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1103 (c) "Sexual misconduct" means any sexual activity between
 1104 an employee and an individual held for examination or admitted
 1105 for mental health treatment ~~a patient~~, regardless of the consent
 1106 of that individual ~~the patient~~. The term does not include an act
 1107 done for a bona fide medical purpose or an internal search
 1108 conducted in the lawful performance of duty by an employee.

1109 (2) An employee who engages in sexual misconduct with an
 1110 individual ~~a patient~~ who:

1111 (a) Is in the custody of the department; or

1112 (b) Resides in a receiving facility or a treatment
 1113 facility, ~~as those terms are defined in s. 394.455,~~

1114
 1115 commits a felony of the second degree, punishable as provided in
 1116 s. 775.082, s. 775.083, or s. 775.084. An employee may be found
 1117 guilty of violating this subsection without having committed the
 1118 crime of sexual battery.

1119 (3) The consent of an individual held for examination or
 1120 admitted for treatment ~~the patient~~ to the sexual activity is not
 1121 a defense to prosecution under this section.

1122 (4) This section does not apply to an employee who:

1123 (a) Is legally married to the individual ~~patient~~; or

1124 (b) Has no reason to believe that the person with whom the
 1125 employee engaged in sexual misconduct is an individual ~~a patient~~
 1126 receiving services as described in subsection (2).

1127 Section 10. Section 394.4595, Florida Statutes, is amended
 1128 to read:

1129 394.4595 Florida statewide and local advocacy council
 1130 ~~councils~~; access ~~to patients and records~~.—Any facility
 1131 designated by the department as a receiving or treatment

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1132 facility must allow access to any individual held for
1133 examination or admitted for mental health treatment ~~patient~~ and
1134 his or her ~~the~~ clinical and legal records ~~of any patient~~
1135 ~~admitted pursuant to the provisions of this act~~ by members of
1136 the Florida statewide and local advocacy councils.

1137 Section 11. Section 394.4597, Florida Statutes, is amended
1138 to read:

1139 394.4597 Persons to be notified; appointment of a ~~patient's~~
1140 representative.—

1141 (1) VOLUNTARY ADMISSION PATIENTS.—At the time an individual
1142 ~~a patient~~ is voluntarily admitted to a receiving or treatment
1143 facility, the identity and contact information of the ~~a~~ person
1144 to be notified in case of an emergency shall be entered in the
1145 ~~patient's~~ clinical record.

1146 (2) INVOLUNTARY ADMISSION PATIENTS.—

1147 ~~(a)~~ At the time an individual ~~a patient~~ is admitted to a
1148 facility for involuntary examination or placement, or when a
1149 petition for involuntary placement is filed, the names,
1150 addresses, and telephone numbers of the individual's ~~patient's~~
1151 guardian or guardian advocate, or representative if he or she
1152 ~~the patient~~ has no guardian or guardian advocate, health care
1153 surrogate, and ~~the patient's~~ attorney shall be entered in the
1154 ~~patient's~~ clinical record.

1155 ~~(a)(b)~~ If the individual ~~patient~~ has no guardian or
1156 guardian advocate, he or she ~~the patient~~ shall be asked to
1157 designate a representative. If the individual ~~patient~~ is unable
1158 or unwilling to designate a representative, the facility shall
1159 select a representative.

1160 ~~(b)(c)~~ The individual ~~patient~~ shall be consulted with

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1161 regard to the selection of a representative by the receiving or
1162 treatment facility and may ~~shall have authority to~~ request that
1163 the any such representative be replaced.

1164 (c) ~~(d)~~ If ~~When~~ the receiving or treatment facility selects
1165 a representative, first preference shall be given to a health
1166 care surrogate, if one has been previously selected ~~by the~~
1167 patient. If the individual patient has not previously selected a
1168 health care surrogate, the selection, except for good cause
1169 documented in the ~~patient's~~ clinical record, shall be made from
1170 the following list in the order of listing:

- 1171 1. The individual's ~~patient's~~ spouse.
- 1172 2. An adult child of the individual patient.
- 1173 3. A parent of the individual patient.
- 1174 4. The adult next of kin of the individual patient.
- 1175 5. An adult friend of the individual patient.
- 1176 6. The appropriate Florida local advocacy council as
1177 provided in s. 402.166.

1178 (d) ~~(e)~~ A licensed professional providing services to the
1179 individual patient under this part, an employee of a facility
1180 providing direct services to the individual patient under this
1181 part, a department employee, a person providing other
1182 substantial services to the individual patient in a professional
1183 or business capacity, or a creditor of the individual may
1184 ~~patient shall~~ not be appointed as the ~~patient's~~ representative.

1185 (e) The representative selected by the individual or
1186 designated by the facility has the right, authority, and
1187 responsibility to:

- 1188 1. Receive notice of the individual's admission;
- 1189 2. Receive notice of proceedings affecting the individual;

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1190 3. Have immediate access to the individual unless such
1191 access is documented to be detrimental to the individual;

1192 4. Receive notice of any restriction of the individual's
1193 right to communicate or receive visitors;

1194 5. Receive a copy of the inventory of personal effects upon
1195 the individual's admission and to request an amendment to the
1196 inventory at any time;

1197 6. Receive disposition of the individual's clothing and
1198 personal effects if not returned to the individual, or to
1199 approve an alternate plan;

1200 7. Petition on behalf of the individual for a writ of
1201 habeas corpus to question the cause and legality of the
1202 individual's detention or to allege that the individual is being
1203 unjustly denied a right or privilege granted herein, or that a
1204 procedure authorized herein is being abused;

1205 8. Apply for a change of venue for the individual's
1206 involuntary placement hearing for the convenience of the parties
1207 or witnesses or because of the individual's condition;

1208 9. Receive written notice of any restriction of the
1209 individual's right to inspect his or her clinical record;

1210 10. Receive notice of the release of the individual from a
1211 receiving facility where an involuntary examination was
1212 performed;

1213 11. Receive a copy of any petition for the individual's
1214 involuntary placement filed with the court; and

1215 12. Be informed by the court of the individual's right to
1216 an independent expert evaluation pursuant to involuntary
1217 placement procedures.

1218 Section 12. Section 394.4598, Florida Statutes, is amended

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1219 to read:

1220 394.4598 Guardian advocate.—

1221 (1) The administrator may petition the court for the
1222 appointment of a guardian advocate based upon the opinion of a
1223 psychiatrist that an individual held for examination or admitted
1224 for mental health treatment ~~the patient~~ is incompetent to
1225 consent to treatment. If the court finds that the individual ~~a~~
1226 ~~patient~~ is incompetent to consent to treatment and has not been
1227 adjudicated incapacitated and a guardian having ~~with the~~
1228 authority to consent to mental health treatment has not been
1229 appointed, it shall appoint a guardian advocate. The individual
1230 ~~patient~~ has the right to have an attorney represent him or her
1231 at the hearing. If the individual ~~person~~ is indigent, the court
1232 shall appoint the office of the public defender to represent him
1233 or her at the hearing. The individual ~~patient~~ has the right to
1234 testify, cross-examine witnesses, and present witnesses. The
1235 proceeding must ~~shall~~ be recorded ~~either~~ electronically or
1236 stenographically, and testimony shall be ~~provided~~ under oath.
1237 One of the professionals authorized to give an opinion in
1238 support of a petition for involuntary placement, as described in
1239 s. 394.4655 or s. 394.467, must testify. The ~~A~~ guardian advocate
1240 must meet the qualifications of a guardian pursuant to ~~contained~~
1241 ~~in~~ part IV of chapter 744., ~~except that~~ A professional providing
1242 services to the individual under ~~referred to in~~ this part, an
1243 employee of the facility providing direct services to the
1244 individual ~~patient under this part~~, a departmental employee, a
1245 facility administrator, or a member of the Florida local
1246 advocacy council may ~~shall~~ not be appointed. A person who is
1247 appointed as a guardian advocate must agree to the appointment.

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1248 (2) A facility requesting appointment of a guardian
1249 advocate must, prior to the appointment, provide the prospective
1250 guardian advocate with information concerning ~~about~~ the duties
1251 and responsibilities of guardian advocates, including ~~the~~
1252 information about the ethics of medical decisionmaking. Before
1253 asking a guardian advocate to give consent to treatment for an
1254 individual held for examination or admitted for mental health
1255 treatment a patient, the facility must ~~shall~~ provide ~~to the~~
1256 ~~guardian advocate~~ sufficient information so that the guardian
1257 advocate can decide whether to give express and informed consent
1258 to the treatment, including information that the treatment is
1259 essential to the care of the individual ~~patient~~, and that the
1260 treatment does not present an unreasonable risk of serious,
1261 hazardous, or irreversible side effects. Before giving consent
1262 to treatment, the guardian advocate must meet and talk with the
1263 individual ~~patient~~ and the individual's ~~patient's~~ physician
1264 face-to-face in person, if ~~at all~~ possible, and by telephone, if
1265 not. The guardian advocate shall make every effort to make the
1266 mental health care decision that he or she believes the
1267 individual would have made under the circumstances if the
1268 individual were capable of making such decision. The decision of
1269 the guardian advocate may be reviewed by the court, upon
1270 petition of the individual's ~~patient's~~ attorney or, ~~the~~
1271 ~~patient's~~ family, or the facility administrator.

1272 (3) Before ~~Prior to~~ a guardian advocate may exercise
1273 ~~exercising~~ his or her authority, the guardian advocate must
1274 complete ~~shall attend~~ a training course approved by the court.
1275 The ~~This~~ training course, of not less than 4 hours, must
1276 include, at minimum, information concerning individual ~~about the~~

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1277 ~~patient~~ rights, psychotropic medications, diagnosis of mental
1278 illness, the ethics of medical decisionmaking, and duties of
1279 guardian advocates. This training course shall take the place of
1280 the training required for guardians appointed under ~~pursuant to~~
1281 chapter 744.

1282 (4) The information provided ~~to be supplied~~ to prospective
1283 guardian advocates before ~~prior to~~ their appointment and the
1284 training course for guardian advocates must be developed and
1285 completed through a course developed by the department and
1286 approved by the chief judge of the circuit court ~~and taught by a~~
1287 ~~court-approved organization. Court-approved organizations may~~
1288 ~~include, but are not limited to, community or junior colleges,~~
1289 ~~guardianship organizations, and the local bar association or The~~
1290 ~~Florida Bar.~~ The court may, ~~in its discretion,~~ waive some or all
1291 of the training requirements for guardian advocates or impose
1292 additional requirements. The court shall make its decision on a
1293 case-by-case basis and, in making its decision, shall consider
1294 the experience and education of the guardian advocate, the
1295 duties assigned to the guardian advocate, and the needs of the
1296 individual whom the guardian advocate represents ~~patient~~.

1297 (5) In selecting a guardian advocate, the court shall give
1298 preference to a health care surrogate, if one has already been
1299 designated by the individual held for examination or admitted
1300 for mental health treatment ~~patient~~. If the individual ~~patient~~
1301 has not previously selected a health care surrogate, except for
1302 good cause documented in the court record, the selection shall
1303 be made from the following list in the order of listing:

1304 (a) The individual's ~~patient's~~ spouse.

1305 (b) An adult child of the individual ~~patient~~.

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- 1306 (c) A parent of the individual ~~patient~~.
- 1307 (d) The adult next of kin of the individual ~~patient~~.
- 1308 (e) An adult friend of the individual ~~patient~~.
- 1309 (f) An adult trained and willing to serve as guardian
1310 advocate for the individual ~~patient~~.
- 1311 (6) If a guardian having ~~with the~~ authority to consent to
1312 medical treatment has not already been appointed, or if the
1313 individual held for examination or admitted for mental health
1314 treatment ~~patient~~ has not already designated a health care
1315 surrogate, the court may authorize the guardian advocate to
1316 consent to medical treatment, as well as mental health
1317 treatment. Unless otherwise limited by the court, a guardian
1318 advocate that has ~~with~~ authority to consent to medical treatment
1319 shall have the same authority to make health care decisions and
1320 be subject to the same restrictions as a proxy appointed under
1321 part IV of chapter 765. Unless the guardian advocate has sought
1322 and received express court approval ~~in proceeding separate from~~
1323 ~~the proceeding to determine the competence of the patient to~~
1324 ~~consent to medical treatment~~, the guardian advocate may not
1325 consent to:
- 1326 (a) Abortion.
- 1327 (b) Sterilization.
- 1328 (c) Electroconvulsive treatment.
- 1329 (d) Psychosurgery.
- 1330 (e) Experimental treatments that have not been approved by
1331 a federally approved institutional review board in accordance
1332 with 45 C.F.R. part 46 or 21 C.F.R. part 56.
- 1333
- 1334 The court shall ~~must~~ base its decision on evidence that the

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

1340 (7) The guardian advocate shall be discharged when the
1341 individual whom he or she represents patient is discharged from
1342 an order for involuntary outpatient ~~placement~~ or ~~involuntary~~
1343 inpatient placement or when the individual patient is
1344 transferred from involuntary to voluntary status. The court ~~or a~~
1345 ~~hearing officer~~ shall consider the competence of the individual
1346 ~~patient~~ pursuant to subsection (1) and may consider an
1347 involuntarily placed individual's patient's competence to
1348 consent to treatment at any hearing. Upon sufficient evidence,
1349 the court may restore, or the magistrate hearing officer may
1350 recommend that the court restore, the individual's patient's
1351 competence. A copy of the order restoring competence or the
1352 certificate of discharge containing the restoration of
1353 competence shall be provided to the individual patient and the
1354 guardian advocate.

1355 Section 13. Section 394.4599, Florida Statutes, is amended
1356 to read:

1357 394.4599 Notice.—

1358 (1) VOLUNTARY ADMISSION PATIENTS.—Notice of an individual's
1359 a voluntary ~~patient's~~ admission shall ~~only~~ be given only at the
1360 individual's request ~~of the patient~~, except that in an
1361 emergency, notice shall be given as determined by the facility.

1362 (2) INVOLUNTARY ADMISSION PATIENTS.—

1363 (a) If notice of involuntary admission ~~Whenever notice is~~

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1364 required to be given ~~under this part~~, such notice shall be given
1365 to the individual admitted patient and his or her ~~the patient's~~
1366 guardian, guardian advocate, attorney, and representative.

1367 1. ~~If~~ ~~When~~ notice is required to be given to an individual
1368 ~~a patient~~, it shall be given both orally and in writing, in the
1369 language and terminology that the individual patient can
1370 understand, and, if needed, the facility shall provide an
1371 interpreter for the individual patient.

1372 2. Notice to an individual's ~~a patient's~~ guardian, guardian
1373 advocate, health care surrogate or proxy, attorney, and
1374 representative shall be given by ~~United States mail and by~~
1375 ~~registered or certified~~ mail with the receipts attached to the
1376 ~~patient's~~ clinical record. Hand delivery by a facility employee
1377 may be used as an alternative, with delivery documented in the
1378 clinical record. If notice is given by a state attorney or an
1379 attorney for the department, a certificate of service is ~~shall~~
1380 ~~be~~ sufficient to document service.

1381 (b) A receiving facility shall give prompt notice of the
1382 whereabouts of an individual ~~a patient~~ who is being
1383 involuntarily held for examination to the individual's guardian
1384 or representative, by telephone or in person within 24 hours
1385 after the individual's patient's arrival at the facility, ~~unless~~
1386 ~~the patient requests that no notification be made~~. Contact
1387 attempts must ~~shall~~ be documented in the individual's patient's
1388 clinical record and shall begin as soon as reasonably possible
1389 after the individual's patient's arrival. Notice that an
1390 individual is being involuntarily held ~~a patient is being~~
1391 ~~admitted as an involuntary patient~~ shall be given to the Florida
1392 local advocacy council by ~~no later than~~ the next working day

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1393 after the individual ~~patient~~ is admitted.

1394 (c) The written notice of the filing of the petition for
1395 the involuntary placement of an individual being held must
1396 include ~~contain~~ the following:

1397 1. Notice that the petition has been filed with the circuit
1398 court in the county in which the individual ~~patient~~ is
1399 hospitalized and the court's address ~~of such court~~.

1400 2. Notice that the office of the public defender has been
1401 appointed to represent the individual ~~patient~~ in the proceeding,
1402 if the individual ~~patient~~ is not otherwise represented by
1403 counsel.

1404 3. The date, time, and place of the hearing and the name of
1405 each examining expert and every other person expected to testify
1406 in support of continued detention.

1407 4. Notice that the individual ~~patient~~, the individual's
1408 ~~patient's~~ guardian or representative, or the administrator may
1409 apply for a change of venue for the convenience of the parties
1410 or witnesses or because of the individual's condition ~~of the~~
1411 ~~patient~~.

1412 5. Notice that the individual ~~patient~~ is entitled to an
1413 independent expert examination and, if the individual ~~patient~~
1414 cannot afford such an examination, that the court will provide
1415 for one.

1416 (d) A treatment facility shall provide notice of an
1417 individual's ~~a patient's~~ involuntary admission on the next
1418 regular working day after the individual's ~~patient's~~ arrival at
1419 the facility.

1420 (e) If an individual ~~When a patient~~ is to be transferred
1421 from one facility to another, notice shall be given by the

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1422 facility where the individual patient is located before ~~prior to~~
1423 the transfer.

1424 Section 14. Section 394.460, Florida Statutes, is repealed.

1425 Section 15. Section 394.461, Florida Statutes, is amended
1426 to read:

1427 394.461 Designation of receiving and treatment facilities.—
1428 The department may ~~is authorized to~~ designate and monitor
1429 receiving facilities and treatment facilities and may suspend or
1430 withdraw such designation for failure to comply with this part
1431 and rules adopted under this part. Only governmental facilities,
1432 and others ~~Unless~~ designated by the department, may ~~facilities~~
1433 ~~are not permitted to~~ hold or treat individuals on an involuntary
1434 basis ~~patients under this part.~~

1435 (1) RECEIVING FACILITY.—The department may designate any
1436 ~~community facility as a receiving facility. Any other facility~~
1437 within the state, including a private facility, as a receiving
1438 facility if ~~or a federal facility, may be so designated by the~~
1439 ~~department, provided that~~ such designation is agreed to by the
1440 governing body or authority of the facility.

1441 (2) TREATMENT FACILITY.—The department may designate any
1442 state-owned, state-operated, or state-supported facility as a
1443 state treatment facility. An individual may ~~A civil patient~~
1444 ~~shall~~ not be admitted to a civil state treatment facility
1445 without previously undergoing a transfer evaluation. Before a
1446 court hearing for involuntary placement in a state treatment
1447 facility, the court shall receive and consider the information
1448 documented in the transfer evaluation. Any other facility,
1449 including a private facility or a federal facility, may be
1450 designated as a treatment facility by the department if,

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1451 ~~provided that~~ such designation is agreed to by the appropriate
1452 governing body or authority of the facility.

1453 (3) GOVERNMENTAL FACILITIES.—Governmental facilities may
1454 provide voluntary and involuntary mental health examination and
1455 treatment for individuals in their care and custody and must
1456 protect the rights of these individuals, pursuant to this part.

1457 (4)~~(3)~~ PRIVATE FACILITIES.—Private facilities designated as
1458 receiving and treatment facilities by the department may provide
1459 examination and treatment of individuals on an ~~of~~ involuntary or
1460 patients, as well as voluntary basis patients, and are subject
1461 to ~~all~~ the provisions of this part.

1462 (5)~~(4)~~ REPORT.—

1463 (a) A facility designated as a ~~public~~ receiving or
1464 treatment facility under this section shall annually report ~~to~~
1465 ~~the department on an annual basis~~ the following data to the
1466 department, unless such ~~these~~ data are currently being submitted
1467 to the Agency for Health Care Administration:

- 1468 1. Number of licensed beds by payor class.
- 1469 2. Number of contract days by payor class.
- 1470 3. Number of persons served ~~admissions~~ by payor class and
1471 diagnoses.
- 1472 4. Number of bed days by payor class.
- 1473 5. Average length of stay by payor class.
- 1474 6. Total revenues by payor class.

1475 (b) For the purposes of this subsection, "payor class"
1476 means Medicare, Medicare HMO, Medicaid, Medicaid HMO, private-
1477 pay health insurance, private-pay health maintenance
1478 organization, private preferred provider organization, the
1479 Department of Children and Family Services, other government

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1480 programs, self-pay individuals ~~patients~~, and charity care.

1481 (c) The data required under this subsection shall be
1482 submitted to the department within ~~no later than~~ 90 days after
1483 ~~following~~ the end of the facility's fiscal year. ~~A facility~~
1484 ~~designated as a public receiving or treatment facility shall~~
1485 ~~submit its initial report for the 6-month period ending June 30,~~
1486 ~~2008.~~

1487 (d) The department shall issue an annual report based on
1488 the data collected ~~required~~ pursuant to this subsection, which
1489 ~~must.~~ ~~The report shall include individual facilities' data by~~
1490 facility, as well as statewide totals. The report shall be
1491 submitted to the Governor, the President of the Senate, and the
1492 Speaker of the House of Representatives.

1493 (6) ~~(5)~~ RULES.—The department shall adopt rules relating to:

1494 (a) Procedures and criteria for receiving and evaluating
1495 ~~facility~~ applications for designation as a receiving or
1496 treatment facility, which may include an onsite facility
1497 inspection and evaluation of an applicant's licensing status and
1498 performance history, as well as consideration of local service
1499 needs.

1500 (b) Minimum standards consistent with this part which ~~that~~
1501 a facility must meet and maintain in order to be designated as a
1502 receiving or treatment facility, and procedures for monitoring
1503 ~~continued~~ adherence to such standards.

1504 (c) Procedures for receiving complaints against a
1505 designated facility and for initiating inspections and
1506 investigations of facilities alleged to have violated the
1507 provisions of this part or rules adopted under this part.

1508 (d) Procedures and criteria for the suspension or

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1509 withdrawal of designation as a receiving or treatment facility.

1510 Section 16. Section 394.4615, Florida Statutes, is amended
1511 to read:

1512 394.4615 Clinical records; confidentiality.—

1513 (1) A clinical record shall be maintained for each
1514 individual held for examination or admitted for mental health
1515 treatment patient. The record must ~~shall~~ include data pertaining
1516 to admission and such other information as may be required under
1517 rules of the department. A clinical record is confidential and
1518 exempt from ~~the provisions of~~ s. 119.07(1). Unless waived by the
1519 express and informed consent of the individual, ~~by the patient~~
1520 or by his or her the patient's guardian, ~~or~~ guardian advocate,
1521 health care surrogate or proxy, or, if ~~the patient is~~ deceased,
1522 by his or her the patient's personal representative or the
1523 family member who stands next in line of intestate succession,
1524 the confidential status of the clinical record is ~~shall~~ not be
1525 lost by ~~either~~ authorized or unauthorized disclosure to any
1526 person, organization, or agency.

1527 (2) The clinical record of an individual held for
1528 examination or admitted for mental health treatment shall be
1529 released if ~~when~~:

1530 (a) The individual patient or the individual's patient's
1531 guardian, guardian advocate, or health care surrogate or proxy
1532 authorizes the release. The guardian, ~~or~~ guardian advocate, or
1533 surrogate shall be provided access to the appropriate clinical
1534 records ~~of the patient.~~ The individual patient or the
1535 individual's patient's guardian, ~~or~~ guardian advocate, or
1536 surrogate or proxy may authorize the release of information and
1537 clinical records to appropriate persons to ensure the continuity

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1538 of the individual's ~~patient's~~ health care or mental health care.

1539 (b) The individual ~~patient~~ is represented by counsel and
1540 the records are needed by such ~~the patient's~~ counsel for
1541 adequate representation.

1542 (c) A petition for involuntary placement is filed and the
1543 records are needed by the state attorney to evaluate and confirm
1544 the allegations set forth in the petition or to prosecute the
1545 petition.

1546 (d) ~~(e)~~ The court orders such release. In determining
1547 whether there is good cause for disclosure, the court shall
1548 weigh the need for the information to be disclosed against the
1549 possible harm of disclosure to the individual ~~person~~ to whom
1550 such information pertains.

1551 (e) ~~(d)~~ The individual ~~patient~~ is committed to, or ~~is to be~~
1552 returned to, the Department of Corrections ~~from the Department~~
1553 ~~of Children and Family Services~~, and the Department of
1554 Corrections requests such records. The ~~These~~ records shall be
1555 furnished without charge to the Department of Corrections.

1556 (3) Information from the clinical record may be released if
1557 ~~in the following circumstances:~~

1558 (a) The individual ~~When a patient~~ has declared an intention
1559 to harm other persons. If ~~When~~ such declaration has been made,
1560 the administrator may authorize the release of sufficient
1561 information to provide adequate warning to the person threatened
1562 with harm ~~by the patient.~~

1563 (b) ~~When~~ The administrator of the facility or secretary of
1564 the department deems that release to a qualified researcher as
1565 defined in administrative rule, an aftercare treatment provider,
1566 or an employee or agent of the department is necessary for

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1567 treatment of the individual ~~patient~~, maintenance of adequate
1568 records, compilation of treatment data, aftercare planning, or
1569 evaluation of programs.

1570 (c) Necessary for ~~the purpose of~~ determining whether an
1571 individual ~~a person~~ meets the criteria for involuntary
1572 outpatient placement or for preparing the proposed treatment
1573 plan pursuant to s. 394.4655, the clinical record may be
1574 released to the state attorney, the public defender or the
1575 individual's ~~patient's~~ private legal counsel, the court, and to
1576 the appropriate mental health professionals, including the
1577 service provider identified in s. 394.4655(6)(b)
1578 ~~394.4655(6)(b)2.~~, in accordance with state and federal law.

1579 (4) Information from clinical records may be used for
1580 statistical and research purposes if the information is
1581 abstracted in such a way as to protect the identity of
1582 individuals served and meets department policy.

1583 (5) Information from clinical records may be used by the
1584 Agency for Health Care Administration, the department, and the
1585 Florida advocacy councils for the purpose of monitoring facility
1586 activity and complaints concerning facilities.

1587 (6) Clinical records relating to a Medicaid recipient shall
1588 be furnished to the Medicaid Fraud Control Unit in the
1589 Department of Legal Affairs, upon request.

1590 (7) Any person, agency, or entity receiving information
1591 pursuant to this section shall maintain such information as
1592 confidential and exempt from ~~the provisions of~~ s. 119.07(1).

1593 (8) Any facility or private mental health practitioner who
1594 acts in good faith in releasing information pursuant to this
1595 section is not subject to civil or criminal liability for such

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1596 release.

1597 (9) ~~Nothing in~~ This section does not ~~is intended to~~
1598 prohibit the parent or next of kin of an individual ~~a person~~ who
1599 is held for examination ~~in~~ or admitted for ~~treated under a~~
1600 mental health treatment facility or program from requesting and
1601 receiving information limited to a summary of that individual's
1602 ~~person's~~ treatment plan and current physical and mental
1603 condition. Release of such information must ~~shall~~ be in
1604 accordance with the code of ethics of the profession involved.

1605 (10) An adult individual ~~Patients~~ shall have reasonable
1606 access to his or her ~~their~~ clinical records, unless such access
1607 is determined by the individual's ~~patient's~~ physician to be
1608 harmful to the individual ~~patient~~. If the individual's ~~patient's~~
1609 right to inspect his or her clinical record is restricted by the
1610 facility, written notice of the ~~such~~ restriction must ~~shall~~ be
1611 given to the individual ~~patient~~ and to his or her ~~the patient's~~
1612 guardian, guardian advocate, attorney, and representative. In
1613 addition, the restriction must ~~shall~~ be recorded in the clinical
1614 record, together with the reasons for it. The restriction
1615 ~~expires of a patient's right to inspect his or her clinical~~
1616 ~~record shall expire~~ after 7 days but may be renewed, after
1617 review, for subsequent 7-day periods.

1618 (11) Any person who fraudulently alters, defaces, or
1619 falsifies the clinical record of an individual ~~any person~~
1620 receiving mental health services in a facility subject to this
1621 part, or causes or procures any of these offenses to be
1622 committed, commits a misdemeanor of the second degree,
1623 punishable as provided in s. 775.082 or s. 775.083.

1624 Section 17. Section 394.462, Florida Statutes, is amended

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1625 to read:

1626 394.462 Transportation.—

1627 (1) TRANSPORTATION TO A RECEIVING FACILITY.—

1628 (a) Each county shall designate a single law enforcement
1629 agency within the county, or portions thereof, to take an
1630 individual ~~a person~~ into custody upon the entry of an ex parte
1631 order or the execution of a certificate for involuntary
1632 examination by an authorized professional and to transport that
1633 individual ~~person~~ to the nearest receiving facility, excluding a
1634 governmental facility, for examination. A law enforcement
1635 officer acting in good faith pursuant to this part may not be
1636 held criminally or civilly liable for false imprisonment. The
1637 designated law enforcement agency may decline to transport the
1638 individual ~~person~~ to a receiving facility only if:

1639 1. The county or jurisdiction designated by the county has
1640 contracted ~~on an annual basis~~ with an emergency medical
1641 transport service or private transport company for
1642 transportation of individuals ~~persons~~ to receiving facilities
1643 ~~pursuant to this section at the sole cost of the county;~~ and

1644 2. The law enforcement agency and the emergency medical
1645 transport service or private transport company agree that the
1646 continued presence of law enforcement personnel is not necessary
1647 for the safety of the individual being transported ~~person~~ or
1648 others.

1649 ~~(b)3.~~ If transportation for involuntary examination is
1650 provided by an emergency medical transport service or private
1651 transport company, the county or law enforcement agency ~~The~~
1652 ~~jurisdiction~~ designated by the county may seek reimbursement for
1653 transportation expenses. The individual being transported is

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1654 ~~party~~ responsible for payment for such transportation is the
1655 ~~person receiving the transportation~~. The county shall seek
1656 reimbursement from the following sources in the following order:

1657 1.a. From an insurance company, health care corporation, or
1658 other source, if the individual being transported ~~person~~
1659 ~~receiving the transportation~~ is covered by an insurance policy
1660 or subscribes to a health care corporation or other source for
1661 payment of such expenses.

1662 2.b. From the individual being transported ~~person receiving~~
1663 ~~the transportation~~.

1664 3.c. From a financial settlement for medical care,
1665 treatment, hospitalization, or transportation payable or
1666 accruing to the injured party.

1667 ~~(c)-(b)~~ Any company that transports an individual ~~a patient~~
1668 pursuant to this subsection is considered an independent
1669 contractor and is solely liable for the safe and dignified
1670 transportation of the individual ~~patient~~. Such company must be
1671 insured and maintain at least ~~provide no less than~~ \$100,000 in
1672 liability insurance with respect to such ~~the~~ transportation of
1673 ~~patients~~.

1674 ~~(d)-(e)~~ Any company that contracts with a governing board of
1675 a county to transport individuals for examination or treatment
1676 ~~must~~ ~~patients shall~~ comply with the applicable rules of the
1677 department to ensure their ~~the~~ safety and dignity of ~~the~~
1678 ~~patients~~.

1679 ~~(e)-(d)~~ If ~~When~~ a law enforcement officer takes custody of
1680 an individual ~~a person~~ pursuant to this part, the officer may
1681 request assistance from emergency medical personnel if such
1682 assistance is needed for the safety of the officer or the

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1683 individual ~~person~~ in custody.

1684 ~~(f)-(e)~~ If ~~When~~ a member of a mental health overlay program
1685 or a mobile crisis response service is a professional authorized
1686 to initiate an involuntary examination pursuant to s. 394.463
1687 ~~and that professional~~ evaluates an individual ~~a person~~ and
1688 determines that transportation to a receiving facility is
1689 needed, the service, ~~at its discretion,~~ may transport the
1690 individual ~~person~~ to the facility or may call on the law
1691 enforcement agency or other transportation arrangement best
1692 suited to the needs of the individual being transported ~~patient~~.

1693 ~~(g)-(f)~~ If ~~a~~ ~~When~~ any law enforcement officer has custody of
1694 an individual ~~a person~~ based on ~~either~~ noncriminal or minor
1695 criminal behavior that meets the statutory guidelines for
1696 involuntary examination under this part, the law enforcement
1697 officer shall transport the individual ~~person~~ to the nearest
1698 receiving facility for examination.

1699 ~~(h)-(g)~~ If ~~a~~ ~~When~~ any law enforcement officer has arrested
1700 an adult ~~a person~~ for a felony and it appears that the adult
1701 arrested ~~person~~ meets the ~~statutory~~ guidelines for involuntary
1702 examination or placement under this part, the adult ~~such person~~
1703 shall first be processed in the same manner as any other
1704 criminal suspect. The law enforcement agency shall thereafter
1705 immediately notify the nearest public receiving facility, which
1706 shall be responsible for promptly arranging for the examination
1707 and treatment of the adult ~~person~~. A receiving facility is not
1708 required to admit an adult ~~a person~~ charged with a felony ~~crime~~
1709 for whom the facility determines and documents that it is unable
1710 to provide adequate security, but shall provide mental health
1711 examination and treatment to the adult ~~person~~ where he or she is

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1712 held.

1713 (i)~~(h)~~ If the appropriate law enforcement officer believes
1714 that an individual ~~a person~~ has an emergency medical condition
1715 as defined in s. 395.002, the individual ~~person~~ may be ~~first~~
1716 transported to a hospital for emergency medical treatment,
1717 regardless of whether the hospital is a designated receiving
1718 facility.

1719 (j)~~(i)~~ The costs of transportation, evaluation,
1720 hospitalization, and treatment incurred under this subsection by
1721 individuals ~~persons~~ who have been arrested for violations of any
1722 state law or county or municipal ordinance may be recovered as
1723 provided in s. 901.35.

1724 (k)~~(j)~~ The nearest receiving facility must accept
1725 individuals ~~persons~~ brought by law enforcement officers for
1726 involuntary examination.

1727 (l)~~(k)~~ Each law enforcement agency shall develop a
1728 memorandum of understanding with each receiving facility within
1729 the law enforcement agency's jurisdiction which reflects a
1730 single set of protocols for the safe and secure transportation
1731 of the person and transfer of custody of the person. These
1732 protocols must also address crisis intervention measures.

1733 (m)~~(l)~~ If ~~When~~ a jurisdiction has entered into a contract
1734 with an emergency medical transport service or a private
1735 transport company for transportation of individuals ~~persons~~ to
1736 receiving facilities, such service or company shall be given
1737 preference for transportation of individuals ~~persons~~ from
1738 nursing homes, assisted living facilities, adult day care
1739 centers, or adult family-care homes, unless the behavior of the
1740 individual ~~person~~ being transported is such that transportation

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1741 by a law enforcement officer is necessary.

1742 ~~(n)-(m) Nothing in~~ This section does not ~~shall be construed~~
1743 ~~to~~ limit emergency examination and treatment of incapacitated
1744 individuals ~~persons~~ provided in accordance with ~~the provisions~~
1745 ~~of~~ s. 401.445.

1746 (2) TRANSPORTATION TO A TREATMENT FACILITY.—

1747 (a) If ~~neither~~ the individual held for examination or
1748 admitted for mental health treatment or patient ~~nor~~ any person
1749 legally obligated or responsible for the individual ~~patient~~ is
1750 not able to pay for the expense of transporting an individual a
1751 ~~voluntary or involuntary patient~~ to a treatment facility, the
1752 governing board of the county in which the individual ~~patient~~ is
1753 hospitalized shall arrange for the ~~such~~ required transportation
1754 and shall ensure the safe and dignified transportation of the
1755 individual ~~patient~~. The governing board of each county may ~~is~~
1756 ~~authorized to~~ contract with private transport companies for such
1757 ~~the transportation of such patients to and from a treatment~~
1758 ~~facility.~~

1759 (b) Any company that transports an individual a patient
1760 pursuant to this subsection is considered an independent
1761 contractor and is solely liable for the safe and dignified
1762 transportation of the individual ~~patient~~. Such company must be
1763 insured and provide at least ~~no less than~~ \$100,000 in liability
1764 insurance for such ~~with respect to the transportation of~~
1765 ~~patients.~~

1766 (c) Any company that contracts with the governing board of
1767 a county to transport individuals must ~~patients shall~~ comply
1768 with the applicable rules of the department to ensure the safety
1769 and dignity of the individuals transported ~~patients.~~

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1770 (d) County or municipal law enforcement and correctional
1771 personnel and equipment may ~~shall~~ not be used to transport
1772 individuals ~~patients~~ adjudicated incapacitated or found by the
1773 court to meet the criteria for involuntary placement under
1774 ~~pursuant to~~ s. 394.467, except in small rural counties where
1775 there are no cost-efficient alternatives.

1776 (3) TRANSFER OF CUSTODY.—Custody of a person who is
1777 transported pursuant to this part, along with related
1778 documentation, shall be relinquished to a responsible individual
1779 at the appropriate receiving or treatment facility.

1780 (4) EXCEPTIONS.—

1781 (a) An exception to the requirements of this section may be
1782 granted by the secretary ~~of the department~~ for the purposes of
1783 improving service coordination or better meeting the special
1784 needs of individuals. A proposal for an exception shall ~~must~~ be
1785 submitted to the secretary by the circuit ~~district~~ administrator
1786 after being approved by the governing board of each affected
1787 county boards of any affected counties, ~~prior to submission to~~
1788 ~~the secretary~~.

1789 1.(a) A proposal for an exception must identify the
1790 specific provision from which an exception is requested, †
1791 describe how the proposal will be implemented by participating
1792 law enforcement agencies and transportation authorities, † and
1793 provide a plan for the coordination of services such as case
1794 management.

1795 2.(b) ~~An~~ The exception may be granted only for:

1796 a.1. ~~An~~ An arrangement centralizing and improving the
1797 provision of services within a circuit ~~district~~, which may
1798 include an exception to the requirement for transportation to

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1799 the nearest receiving facility;

1800 ~~b.2.~~ An arrangement whereby ~~by which~~ a facility may
1801 provide, in addition to required psychiatric services, an
1802 environment and services that ~~which~~ are uniquely tailored to the
1803 needs of an identified group of individuals who have ~~persons~~
1804 ~~with~~ special needs, such as persons who have ~~with~~ hearing
1805 impairments or visual impairments, or elderly persons who have
1806 ~~with~~ physical frailties; or

1807 ~~c.3.~~ A specialized transportation system that provides an
1808 efficient and humane method of transporting individuals ~~patients~~
1809 to receiving facilities, among receiving facilities, and to
1810 treatment facilities.

1811 ~~2.(e)~~ Any exception approved pursuant to this subsection
1812 must ~~shall~~ be reviewed and approved every 5 years by the
1813 secretary.

1814 (b) The Department of Corrections may transport an
1815 individual who is being released from its custody to a receiving
1816 or treatment facility for involuntary examination or placement.
1817 Such transport shall be to a facility, specified by the
1818 department, which is able to meet the specific needs of the
1819 individual, or, if such specification cannot be made due to
1820 exigent circumstances, transport may be to the nearest receiving
1821 facility.

1822 Section 18. Section 394.4625, Florida Statutes, is amended
1823 to read:

1824 394.4625 Voluntary admissions.—

1825 (1) EXAMINATION AND TREATMENT AUTHORITY TO RECEIVE
1826 PATIENTS.—

1827 (a) A facility may receive for observation, diagnosis, or

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1828 treatment an adult who makes ~~any person 18 years of age or older~~
1829 ~~making~~ application by express and informed consent for admission
1830 or any minor person age 17 or under for whom such application is
1831 made by his or her guardian.

1832 1. If found to show evidence of mental illness, to be
1833 competent to provide express and informed consent, and to be
1834 suitable for treatment, an adult ~~such person 18 years of age or~~
1835 ~~elder~~ may be admitted to the facility.

1836 2. A minor person age 17 or under may be admitted only with
1837 the minor's assent, which must be obtained in conjunction with
1838 consent from the minor's guardian. The minor's assent means that
1839 the minor has affirmatively agreed to stay at the facility for
1840 examination or mental health treatment. Mere failure to object,
1841 absent affirmative agreement, is not assent. The minor's assent
1842 must be verified through a clinical assessment that is
1843 documented in the clinical record and conducted within 12 hours
1844 after admission by a licensed professional authorized to
1845 initiate an involuntary examination pursuant to s. 394.463. In
1846 verifying the minor's assent, the examining professional must
1847 first provide the minor with an explanation of why the minor
1848 will be examined and treated, what the minor can expect while in
1849 the facility, and when the minor may expect to be released,
1850 using language that is appropriate to the minor's age,
1851 experience, maturity, and condition. Unless the minor's assent
1852 is verified pursuant to this section, a petition for involuntary
1853 inpatient placement must be filed with the court within 1
1854 working day after admission or the minor must be released to his
1855 or her guardian within 24 hours after admission ~~only after a~~
1856 ~~hearing to verify the voluntariness of the consent.~~

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1857 (b) A mental health overlay program, ~~or~~ a mobile crisis
1858 response service, or a licensed professional who is authorized
1859 to initiate an involuntary examination pursuant to s. 394.463
1860 and is employed by a community mental health center or clinic
1861 must, pursuant to circuit ~~district~~ procedure approved by the
1862 respective circuit ~~district~~ administrator, conduct an initial
1863 assessment of the ability of the following individuals ~~persons~~
1864 to give express and informed consent to treatment before such
1865 individuals ~~persons~~ may be admitted voluntarily:

1866 1. An individual ~~A person~~ 60 years of age or older for whom
1867 transfer is being sought from a nursing home, assisted living
1868 facility, adult day care center, or adult family-care home, if
1869 ~~when~~ such person has been diagnosed as suffering from dementia.

1870 2. An individual ~~A person~~ 60 years of age or older for whom
1871 transfer is being sought from a nursing home pursuant to s.
1872 400.0255(11) ~~400.0255(12)~~.

1873 3. An individual ~~A person~~ for whom all decisions concerning
1874 medical treatment are currently being lawfully made by a ~~the~~
1875 health care surrogate or proxy designated under chapter 765.

1876 (c) If ~~When~~ an initial assessment of the ability of an
1877 individual ~~a person~~ to give express and informed consent to
1878 treatment is required under this section, and a mobile crisis
1879 response service does not respond to a ~~the~~ request for an
1880 assessment within 2 hours after the request is made or informs
1881 the requesting facility that it will not be able to respond
1882 within 2 hours after the request is made, the requesting
1883 facility may arrange for assessment by a ~~any~~ licensed
1884 professional authorized to initiate an involuntary examination
1885 under ~~pursuant to~~ s. 394.463. The professional may not be ~~who is~~

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1886 ~~not~~ employed by or under contract with, or ~~and does not~~ have a
1887 financial interest in, ~~either~~ the facility initiating the
1888 transfer or the ~~receiving~~ facility to which the transfer may be
1889 made, and may not have a financial interest in the outcome of
1890 the assessment.

1891 (d) A facility may not admit an individual on ~~as a~~
1892 voluntary status ~~patient a person~~ who has been adjudicated
1893 incapacitated, unless the condition of incapacity has been
1894 judicially removed. If a facility admits an individual on
1895 voluntary status ~~as a voluntary patient a person~~ who is later
1896 determined to have been adjudicated incapacitated, and the
1897 condition of incapacity had not been removed by the time of the
1898 admission, the facility must ~~either~~ discharge ~~the patient~~ or
1899 transfer the individual ~~patient~~ to involuntary status.

1900 (e) The health care surrogate or proxy of an individual on
1901 ~~a voluntary~~ status ~~patient~~ may not consent to the provision of
1902 mental health treatment for that individual ~~the patient~~. An
1903 individual on voluntary status ~~A voluntary patient~~ who is
1904 unwilling or unable to provide express and informed consent to
1905 mental health treatment must ~~either~~ be discharged or transferred
1906 to involuntary status.

1907 (f) Within 24 hours after an individual's voluntary
1908 admission ~~of a voluntary patient~~, the admitting physician shall
1909 document in the ~~patient's~~ clinical record that the individual
1910 ~~patient~~ is able to give express and informed consent for
1911 admission. If the individual ~~patient~~ is not able to give express
1912 and informed consent for admission, the facility must ~~shall~~
1913 ~~either~~ discharge ~~the patient~~ or transfer the individual ~~patient~~
1914 to involuntary status pursuant to subsection (5).

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1915 (2) RELEASE OR DISCHARGE OF VOLUNTARY PATIENTS.-

1916 (a) A facility shall discharge an individual admitted on a
 1917 voluntary status who ~~patient~~:

1918 1. ~~Who~~ Has sufficiently improved so that retention in the
 1919 facility is no longer desirable. The individual ~~A patient~~ may
 1920 also be discharged to the care of a community facility.

1921 2. ~~Who~~ Has revoked ~~revokes~~ consent to admission or requests
 1922 discharge. The individual ~~A voluntary patient~~ or his or her a
 1923 relative, friend, or attorney ~~of the patient~~ may request
 1924 discharge ~~either~~ orally or in writing at any time following
 1925 admission to the facility. The individual ~~patient~~ must be
 1926 discharged within 24 hours after ~~of~~ the request, unless the
 1927 request is rescinded or the individual ~~patient~~ is transferred to
 1928 involuntary status pursuant to this section. The 24-hour time
 1929 period may be extended by a treatment facility if ~~when~~ necessary
 1930 for adequate discharge planning, but may ~~shall~~ not exceed 3 days
 1931 exclusive of weekends and holidays. If the individual ~~patient~~,
 1932 or another on his or her ~~the patient's~~ behalf, makes an oral
 1933 request for discharge to a staff member, such request must ~~shall~~
 1934 be immediately entered in the ~~patient's~~ clinical record. If the
 1935 request for discharge is made by a person other than the
 1936 individual ~~patient~~, the discharge may be conditioned upon the
 1937 individual's express and informed consent ~~of the patient~~.

1938 (b) An individual on A voluntary status ~~patient~~ who has
 1939 been admitted to a facility and who refuses to consent to or
 1940 revokes consent to treatment must ~~shall~~ be discharged within 24
 1941 hours after such refusal or revocation, unless transferred to
 1942 involuntary status pursuant to this section or unless the
 1943 refusal or revocation is freely and voluntarily rescinded by the

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1944 individual patient.

1945 (c) An individual on voluntary status who has been charged
1946 with a crime shall be returned to the custody of a law
1947 enforcement officer upon release or discharge from a facility.

1948 (3) NOTICE OF RIGHT TO DISCHARGE.—At the time of admission
1949 and at least every 6 months thereafter, an individual on a
1950 voluntary status patient shall be notified in writing of his or
1951 her right to apply for a discharge.

1952 (4) TRANSFER TO VOLUNTARY STATUS.—An individual on
1953 involuntary status patient who has been certified by a physician
1954 or psychologist as competent to provide express and informed
1955 consent and who applies to be transferred to voluntary status
1956 shall be transferred to voluntary status immediately, unless the
1957 individual patient has been charged with a crime, or has been
1958 involuntarily placed for treatment by a court pursuant to s.
1959 394.467 and continues to meet the criteria for involuntary
1960 placement. When transfer to voluntary status occurs, notice
1961 shall be given as provided in s. 394.4599.

1962 (5) TRANSFER TO INVOLUNTARY STATUS.—If an individual on
1963 when a voluntary status patient, or an authorized person on the
1964 individual's the patient's behalf, makes a request for
1965 discharge, the request for discharge, unless freely and
1966 voluntarily rescinded, must be communicated to a physician,
1967 clinical psychologist, or psychiatrist as quickly as possible,
1968 but within not later than 12 hours after the request is made. If
1969 the individual patient meets the criteria for involuntary
1970 placement, the administrator of the facility must file with the
1971 court a petition for involuntary placement, within 2 court
1972 working days after the request for discharge is made. If the

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1973 petition is not filed within 2 court working days, the
 1974 individual must ~~patient shall~~ be discharged. Pending the filing
 1975 of the petition, the individual ~~patient~~ may be held and
 1976 emergency treatment rendered in the least restrictive manner,
 1977 upon the written order of a physician, if it is determined that
 1978 such treatment is necessary for the safety of the individual
 1979 ~~patient~~ or others.

1980 Section 19. Section 394.463, Florida Statutes, is amended
 1981 to read:

1982 394.463 Involuntary examination.—

1983 (1) CRITERIA.—An individual ~~A person~~ may be taken to a
 1984 receiving facility for involuntary examination if there is
 1985 reason to believe that he or she ~~the person~~ has a mental illness
 1986 and because of this ~~his or her~~ mental illness:

1987 (a)1. The individual ~~person~~ has refused voluntary
 1988 examination after conscientious explanation and disclosure of
 1989 the purpose of the examination; or

1990 2. The individual ~~person~~ is unable to determine for himself
 1991 or herself whether examination is necessary; and

1992 (b)~~1~~. Without care or treatment:~~; the person~~

1993 1. The individual is likely to suffer from neglect or
 1994 refuse to care for himself or herself; such neglect or refusal
 1995 poses a real and present threat of substantial harm to his or
 1996 her well-being; and it is not apparent that such harm may be
 1997 avoided through the help of willing family members or friends or
 1998 the provision of other services; or

1999 2. There is a substantial likelihood ~~that without care or~~
 2000 ~~treatment~~ the individual ~~person~~ will cause serious bodily harm
 2001 to self ~~himself or herself~~ or others in the near future, as

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2002 evidenced by recent behavior.

2003 (2) INVOLUNTARY EXAMINATION.—

2004 (a) An involuntary examination may be initiated by any one
2005 of the following means:

2006 1. A court may enter an ex parte order stating that an
2007 individual ~~a person~~ appears to meet the criteria for involuntary
2008 examination, giving the findings on which that conclusion is
2009 based. The ex parte order for involuntary examination must be
2010 based on sworn testimony, written or oral, which includes
2011 specific facts that support the finding that the criteria have
2012 been met. Any behavior relied on for the issuance of the ex
2013 parte order must have occurred within the preceding 14 days. ~~If~~
2014 ~~other less restrictive means are not available, such as~~
2015 ~~voluntary appearance for outpatient evaluation,~~ A law
2016 enforcement officer, or other designated agent of the court,
2017 shall take the individual ~~person~~ into custody and deliver him or
2018 her to the nearest receiving facility for involuntary
2019 examination. The ~~order of the court~~ order must ~~shall~~ be made a
2020 part of the ~~patient's~~ clinical record. A ~~No~~ fee may not ~~shall~~ be
2021 charged for the filing of an order under this subsection. Any
2022 receiving facility accepting the individual ~~patient~~ based on the
2023 ~~this~~ order must send a copy of the order to the Agency for
2024 Health Care Administration on the next working day. The order is
2025 ~~shall be~~ valid only until the individual is delivered to the
2026 receiving facility until executed or, if not executed, for the
2027 period specified in the order itself, whichever occurs first. If
2028 a ~~no~~ time limit is not specified in the order, the order is
2029 ~~shall be~~ valid for 7 days after the date it ~~that the order~~ was
2030 signed.

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2031 2. A law enforcement officer shall take an individual ~~a~~
2032 ~~person~~ who appears to meet the criteria for involuntary
2033 examination into custody and deliver or arrange for the delivery
2034 of the individual ~~the person or have him or her delivered~~ to the
2035 nearest receiving facility for examination. The officer shall
2036 complete ~~execute~~ a written report detailing the circumstances
2037 under which the individual ~~person~~ was taken into custody. ~~and~~
2038 The report must ~~shall~~ be made a part of the ~~patient's~~ clinical
2039 record. Any receiving facility accepting the individual ~~patient~~
2040 based on the ~~this~~ report must send a copy of the report to the
2041 Agency for Health Care Administration on the next working day.

2042 3. A physician, clinical psychologist, psychiatric nurse,
2043 mental health counselor, marriage and family therapist, ~~or~~
2044 clinical social worker, or physician assistant may execute a
2045 certificate stating that he or she has examined the individual ~~a~~
2046 ~~person~~ within the preceding 48 hours and finds that the
2047 individual ~~person~~ appears to meet the criteria for involuntary
2048 examination and stating the observations upon which that
2049 conclusion is based. ~~If other less restrictive means are not~~
2050 ~~available, such as voluntary appearance for outpatient~~
2051 ~~evaluation,~~ A law enforcement officer shall take the individual
2052 ~~person~~ named in the certificate into custody and deliver him or
2053 her to the nearest receiving facility for involuntary
2054 examination. The law enforcement officer shall complete ~~execute~~
2055 a written report detailing the circumstances under which the
2056 individual ~~person~~ was taken into custody. The report and
2057 certificate shall be made a part of the ~~patient's~~ clinical
2058 record. Any receiving facility accepting the individual ~~patient~~
2059 based on the ~~this~~ certificate must send a copy of the

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2060 certificate to the Agency for Health Care Administration on the
2061 next working day. The certificate is valid only until the
2062 individual is delivered to the receiving facility or until 7
2063 calendar days after the certificate was executed, whichever
2064 occurs first.

2065 (b) A person who initiates an involuntary examination of a
2066 minor shall make and document immediate attempts to notify the
2067 minor's guardian of such examination. A receiving facility
2068 accepting a minor for involuntary examination must immediately
2069 notify the minor's guardian upon the minor's arrival.

2070 (c) ~~(b)~~ An individual may ~~A person shall~~ not be removed from
2071 a ~~any~~ program or residential placement licensed under chapter
2072 400 or chapter 429 and transported to a receiving facility for
2073 involuntary examination unless an ex parte order, a professional
2074 certificate, or a law enforcement officer's report is first
2075 prepared. If the condition of the individual ~~person~~ is such that
2076 preparation of a law enforcement officer's report is not
2077 practicable before removal, the report must ~~shall~~ be completed
2078 as soon as possible after removal, but ~~in any case~~ before the
2079 individual ~~person~~ is transported to a receiving facility. A
2080 receiving facility admitting an individual ~~a person~~ for
2081 involuntary examination who is not accompanied by the required
2082 ex parte order, professional certificate, or law enforcement
2083 officer's report must ~~shall~~ notify the Agency for Health Care
2084 Administration of such admission by certified mail by ~~no later~~
2085 ~~than~~ the next working day. ~~The provisions of this paragraph do~~
2086 ~~not apply when transportation is provided by the patient's~~
2087 ~~family or guardian.~~

2088 (d) ~~(e)~~ A law enforcement officer acting in accordance with

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2089 an ex parte order issued pursuant to this subsection may serve
2090 and execute such order on any day of the week, at any time of
2091 the day or night.

2092 (e)~~(d)~~ A law enforcement officer acting in accordance with
2093 an ex parte order issued pursuant to this subsection may use
2094 ~~such~~ reasonable physical force if ~~as is~~ necessary to gain entry
2095 to the premises, and any dwellings, buildings, or other
2096 structures located on the premises, and to take custody of the
2097 individual person who is the subject of the ex parte order.

2098 (f)~~(e)~~ The Agency for Health Care Administration shall
2099 receive and maintain the copies of ex parte orders, involuntary
2100 outpatient placement orders issued pursuant to s. 394.4655,
2101 involuntary inpatient placement orders issued pursuant to s.
2102 394.467, professional certificates, and law enforcement
2103 officers' reports. These documents shall be considered part of
2104 the clinical record, governed by ~~the provisions of~~ s. 394.4615.
2105 The agency shall prepare annual reports analyzing the data
2106 obtained from these documents, without information identifying
2107 individuals held for examination or admitted for mental health
2108 treatment patients, and shall provide copies of reports to the
2109 department, the President of the Senate, the Speaker of the
2110 House of Representatives, and the minority leaders of the Senate
2111 and the House of Representatives.

2112 (g)~~(f)~~ An individual ~~A patient~~ shall be examined by a
2113 physician or clinical psychologist ~~at a receiving facility~~
2114 without unnecessary delay to determine if the criteria for
2115 involuntary inpatient placement is met. Emergency treatment may
2116 be provided ~~and may~~, upon the order of a physician, ~~be given~~
2117 ~~emergency treatment~~ if it is determined that such treatment is

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2118 necessary for the safety of the patient or others. ~~The patient~~
2119 ~~may not be released by the receiving facility or its contractor~~
2120 ~~without the documented approval of a psychiatrist, a clinical~~
2121 ~~psychologist, or, if the receiving facility is a hospital, the~~
2122 ~~release may also be approved by an attending emergency~~
2123 ~~department physician with experience in the diagnosis and~~
2124 ~~treatment of mental and nervous disorders and after completion~~
2125 ~~of an involuntary examination pursuant to this subsection.~~
2126 ~~However, a patient may not be held in a receiving facility for~~
2127 ~~involuntary examination longer than 72 hours.~~

2128 (h) An individual may not be held for involuntary
2129 examination for more than 72 hours. Based on the individual's
2130 needs, one of the following actions must be taken within the 72-
2131 hour period:

2132 1. The individual shall be released after the completion of
2133 the involuntary examination and with the documented approval of
2134 a psychiatrist or a clinical psychologist or, if the facility is
2135 a hospital, the release may be approved by an attending
2136 emergency department physician;

2137 2. The individual shall be asked to give express and
2138 informed consent for voluntary admission if a physician or
2139 clinical psychologist has determined that the individual is
2140 competent to consent to treatment; or

2141 3. A petition for involuntary placement shall be completed
2142 and filed in the circuit court if involuntary outpatient or
2143 inpatient treatment is deemed necessary. If the 72-hour period
2144 ends on a weekend or holiday, the petition must be filed by the
2145 next working day. If inpatient treatment is deemed necessary,
2146 the least restrictive treatment consistent with the optimum

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2147 improvement of the individual's condition must be made
2148 available.

2149 (i) An individual released from a receiving or treatment
2150 facility on a voluntary or involuntary basis who is charged with
2151 a crime shall be returned to the custody of a law enforcement
2152 officer.

2153 (j)~~(g)~~ If an individual ~~A person~~ for whom an involuntary
2154 examination has been initiated ~~who~~ is also being evaluated or
2155 treated at a hospital for an emergency medical condition
2156 specified in s. 395.002, ~~must be examined by a receiving~~
2157 ~~facility within 72 hours.~~ the 72-hour period begins when the
2158 individual ~~patient~~ arrives at the hospital and ceases when the
2159 attending physician documents that the individual ~~patient~~ has an
2160 emergency medical condition. The 72-hour period resumes when the
2161 physician documents that the emergency medical condition has
2162 stabilized or does not exist. ~~If the patient is examined at a~~
2163 ~~hospital providing emergency medical services by a professional~~
2164 ~~qualified to perform an involuntary examination and is found as~~
2165 ~~a result of that examination not to meet the criteria for~~
2166 ~~involuntary outpatient placement pursuant to s. 394.4655(1) or~~
2167 ~~involuntary inpatient placement pursuant to s. 394.467(1), the~~
2168 ~~patient may be offered voluntary placement, if appropriate, or~~
2169 ~~released directly from the hospital providing emergency medical~~
2170 ~~services. The finding by the professional that the patient has~~
2171 ~~been examined and does not meet the criteria for involuntary~~
2172 ~~inpatient placement or involuntary outpatient placement must be~~
2173 ~~entered into the patient's clinical record. Nothing in this~~
2174 ~~paragraph is intended to prevent~~ A hospital providing emergency
2175 medical services may transfer an individual ~~from appropriately~~

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2176 ~~transferring a patient to another hospital before~~ prior to
2177 stabilization if, ~~provided~~ the requirements of s. 395.1041(3)(c)
2178 are have been met.

2179 ~~(h)~~ One of the following must occur within 12 hours after
2180 the ~~patient's~~ attending physician documents that the
2181 individual's patient's medical condition has stabilized or that
2182 an emergency medical condition does not exist:

2183 1. The individual shall be examined by a physician or
2184 clinical psychologist and, if found not to meet the criteria for
2185 involuntary examination pursuant to s. 394.463, shall be
2186 released directly from the hospital providing the emergency
2187 medical services. The results of the examination, including the
2188 final disposition, shall be entered into the clinical record; or

2189 2. The individual shall be transferred to a receiving
2190 facility for examination if appropriate medical and mental
2191 health treatment are available. However, the receiving facility
2192 must be notified of the transfer within 2 hours after the
2193 individual's condition has been stabilized or after
2194 determination that an emergency medical condition does not
2195 exist.

2196 ~~1. The patient must be examined by a designated receiving~~
2197 ~~facility and released; or~~

2198 ~~2. The patient must be transferred to a designated~~
2199 ~~receiving facility in which appropriate medical treatment is~~
2200 ~~available. However, the receiving facility must be notified of~~
2201 ~~the transfer within 2 hours after the patient's condition has~~
2202 ~~been stabilized or after determination that an emergency medical~~
2203 ~~condition does not exist.~~

2204 ~~(i) Within the 72-hour examination period or, if the 72~~

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2205 ~~hours ends on a weekend or holiday, no later than the next~~
2206 ~~working day thereafter, one of the following actions must be~~
2207 ~~taken, based on the individual needs of the patient:~~

2208 ~~1. The patient shall be released, unless he or she is~~
2209 ~~charged with a crime, in which case the patient shall be~~
2210 ~~returned to the custody of a law enforcement officer;~~

2211 ~~2. The patient shall be released, subject to the provisions~~
2212 ~~of subparagraph 1., for voluntary outpatient treatment;~~

2213 ~~3. The patient, unless he or she is charged with a crime,~~
2214 ~~shall be asked to give express and informed consent to placement~~
2215 ~~as a voluntary patient, and, if such consent is given, the~~
2216 ~~patient shall be admitted as a voluntary patient; or~~

2217 ~~4. A petition for involuntary placement shall be filed in~~
2218 ~~the circuit court when outpatient or inpatient treatment is~~
2219 ~~deemed necessary. When inpatient treatment is deemed necessary,~~
2220 ~~the least restrictive treatment consistent with the optimum~~
2221 ~~improvement of the patient's condition shall be made available.~~
2222 ~~When a petition is to be filed for involuntary outpatient~~
2223 ~~placement, it shall be filed by one of the petitioners specified~~
2224 ~~in s. 394.4655(3)(a). A petition for involuntary inpatient~~
2225 ~~placement shall be filed by the facility administrator.~~

2226 (3) NOTICE OF RELEASE.—Notice of the release shall be given
2227 to the individual's ~~patient's~~ guardian or representative, to any
2228 person who executed a certificate admitting the individual
2229 ~~patient~~ to the receiving facility, and to any court that ~~which~~
2230 ordered the individual's ~~patient's~~ evaluation.

2231 Section 20. Section 394.4655, Florida Statutes, is amended
2232 to read:

2233 394.4655 Involuntary outpatient placement.—

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2234 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.—An
2235 individual ~~A person~~ may be ordered to involuntary outpatient
2236 placement upon a finding of the court ~~that~~ by clear and
2237 convincing evidence that:

2238 (a) The individual is an adult ~~person is 18 years of age or~~
2239 ~~older~~;

2240 (b) The individual ~~person~~ has a mental illness;

2241 (c) The individual ~~person~~ is unlikely to survive safely in
2242 the community without supervision, based on a clinical
2243 determination;

2244 (d) The individual ~~person~~ has a history of lack of
2245 compliance with treatment for mental illness;

2246 (e) The individual ~~person~~ has:

2247 1. At least twice within the immediately preceding 36
2248 months been involuntarily admitted to a receiving or treatment
2249 facility ~~as defined in s. 394.455~~, or has received mental health
2250 services in a forensic or correctional facility. The 36-month
2251 period does not include any period during which the individual
2252 ~~person~~ was admitted or incarcerated; or

2253 2. Engaged in one or more acts of serious violent behavior
2254 toward self or others, or attempts at serious bodily harm to
2255 self ~~himself or herself~~ or others, within the preceding 36
2256 months;

2257 (f) Due to ~~The person is, as a result of~~ his or her mental
2258 illness, the individual is unlikely to voluntarily participate
2259 in the recommended treatment plan and ~~either he or she~~ has
2260 refused voluntary placement for treatment after sufficient and
2261 conscientious explanation and disclosure of the purpose of
2262 placement for treatment or ~~he or she~~ is unable to determine for

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2263 himself or herself whether placement is necessary;

2264 (g) In view of the individual's ~~person's~~ treatment history
2265 and current behavior, the individual ~~person~~ is in need of
2266 involuntary outpatient placement in order to prevent a relapse
2267 or deterioration that would be likely to result in serious
2268 bodily harm to self ~~himself or herself~~ or others, or a
2269 substantial harm to his or her well-being as set forth in s.
2270 394.463(1);

2271 (h) It is likely that the individual ~~person~~ will benefit
2272 from involuntary outpatient placement; and

2273 (i) All available, less restrictive alternatives that ~~would~~
2274 offer an opportunity for improvement of his or her condition
2275 have been judged to be inappropriate or unavailable.

2276 (2) INVOLUNTARY OUTPATIENT PLACEMENT.—

2277 (a) ~~1.~~ An individual ~~A patient~~ who is being recommended for
2278 involuntary outpatient placement by the administrator of the
2279 receiving facility where the patient has been examined may be
2280 retained by the facility after adherence to the notice
2281 procedures provided in s. 394.4599.

2282 1. The recommendation must be supported by the opinion of a
2283 psychiatrist and the second opinion of a clinical psychologist
2284 or another psychiatrist, both of whom have personally examined
2285 the individual ~~patient~~ within the preceding 72 hours, that the
2286 criteria for involuntary outpatient placement are met. However,
2287 in a county having a population of fewer than 50,000, if the
2288 administrator certifies that a psychiatrist or clinical
2289 psychologist is not available to provide the second opinion, the
2290 second opinion may be provided by a ~~licensed~~ physician who has
2291 postgraduate training and experience in diagnosis and treatment

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2292 of mental and nervous disorders or by a psychiatric nurse. Any
2293 second opinion authorized in this subparagraph may be conducted
2294 through a face-to-face examination, in person or by electronic
2295 means. Such recommendation must be entered on an involuntary
2296 outpatient placement certificate that authorizes the receiving
2297 facility to retain the individual ~~patient~~ pending completion of
2298 a hearing. The certificate shall be made a part of the ~~patient's~~
2299 clinical record.

2300 2. If the individual ~~patient~~ has been stabilized and no
2301 longer meets the criteria for involuntary examination pursuant
2302 to s. 394.463(1), he or she ~~the patient~~ must be released from
2303 the receiving facility while awaiting the hearing for
2304 involuntary outpatient placement.

2305 3. Before filing a petition for involuntary outpatient
2306 treatment, the administrator of the ~~a~~ receiving facility or a
2307 designated department representative must identify the service
2308 provider that will have primary responsibility for service
2309 provision under an order for involuntary outpatient placement,
2310 unless the individual ~~person~~ is otherwise participating in
2311 outpatient psychiatric treatment and is not in need of public
2312 financing for that treatment, in which case the individual, if
2313 eligible, may be ordered to involuntary treatment pursuant to
2314 the existing psychiatric treatment relationship.

2315 4.3. The service provider shall prepare a written proposed
2316 treatment plan in consultation with the individual being held
2317 ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if
2318 appointed, for the court's consideration for inclusion in the
2319 involuntary outpatient placement order. The service provider
2320 shall ~~also~~ provide a copy of the proposed treatment plan to the

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2321 individual ~~patient~~ and the administrator of the receiving
2322 facility. The treatment plan must specify the nature and extent
2323 of the individual's ~~patient's~~ mental illness, address the
2324 reduction of symptoms that necessitate involuntary outpatient
2325 placement, and include measurable goals and objectives for the
2326 services and treatment that are provided to treat the
2327 individual's ~~person's~~ mental illness and assist the individual
2328 ~~person~~ in living and functioning in the community or to prevent
2329 a relapse or deterioration. Service providers may select and
2330 supervise other providers ~~individuals~~ to implement specific
2331 aspects of the treatment plan. The services in the treatment
2332 plan must be deemed clinically appropriate by a physician,
2333 clinical psychologist, psychiatric nurse, mental health
2334 counselor, marriage and family therapist, or clinical social
2335 worker who consults with, or is employed or contracted by, the
2336 service provider. The service provider must certify to the court
2337 in the proposed treatment plan whether sufficient services for
2338 improvement and stabilization are currently available and
2339 whether the service provider agrees to provide those services.
2340 If the service provider certifies that the services in the
2341 proposed treatment plan are not available, the petitioner may
2342 not file the petition.

2343 (b) If an individual ~~a patient~~ in involuntary inpatient
2344 placement meets the criteria for involuntary outpatient
2345 placement, the administrator of the treatment facility may,
2346 before the expiration of the period during which the treatment
2347 facility is authorized to retain the individual ~~patient~~,
2348 recommend involuntary outpatient placement.

2349 1. The recommendation must be supported by the opinion of a

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2350 psychiatrist and the second opinion of a clinical psychologist
2351 or another psychiatrist, both of whom have personally examined
2352 the individual patient within the preceding 72 hours, that the
2353 criteria for involuntary outpatient placement are met. However,
2354 in a county having a population of fewer than 50,000, if the
2355 administrator certifies that a psychiatrist or clinical
2356 psychologist is not available to provide the second opinion, the
2357 second opinion may be provided by a licensed physician who has
2358 postgraduate training and experience in diagnosis and treatment
2359 of mental and nervous disorders or by a psychiatric nurse. Any
2360 second opinion authorized in this subparagraph may be conducted
2361 through a face-to-face examination, in person or by electronic
2362 means. Such recommendation must be entered on an involuntary
2363 outpatient placement certificate, and the certificate must be
2364 made a part of the ~~patient's~~ clinical record.

2365 ~~(e)1.~~ The administrator of the treatment facility shall
2366 provide a copy of the involuntary outpatient placement
2367 certificate and a copy of the state mental health discharge form
2368 to a department representative in the county where the
2369 individual patient will be residing. ~~For persons who are leaving~~
2370 ~~a state mental health treatment facility, the petition for~~
2371 ~~involuntary outpatient placement must be filed in the county~~
2372 ~~where the patient will be residing.~~

2373 2. The service provider that will have primary
2374 responsibility for service provision shall be identified by the
2375 designated department representative prior to the order for
2376 involuntary outpatient placement and shall ~~must~~, before ~~prior to~~
2377 filing a petition for involuntary outpatient placement, certify
2378 to the court whether the services recommended in the

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2379 individual's ~~patient's~~ discharge plan are available in the local
2380 community and whether the service provider agrees to provide
2381 those services. The service provider shall ~~must~~ develop with the
2382 individual ~~patient~~, or the individual's ~~patient's~~ guardian
2383 advocate, if one is appointed, a treatment or service plan that
2384 addresses the needs identified in the discharge plan. The plan
2385 must be deemed to be clinically appropriate by a physician,
2386 clinical psychologist, psychiatric nurse, mental health
2387 counselor, marriage and family therapist, or clinical social
2388 worker, ~~as defined in this chapter~~, who consults with, or is
2389 employed or contracted by, the service provider.

2390 ~~3. If the service provider certifies that the services in~~
2391 ~~the proposed treatment or service plan are not available, the~~
2392 ~~petitioner may not file the petition.~~

2393 (3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.—

2394 (a) A petition for involuntary outpatient placement may be
2395 filed by:

- 2396 1. The administrator of a receiving facility; or
- 2397 2. The administrator of a treatment facility.

2398 (b) Each required criterion for involuntary outpatient
2399 placement must be alleged and substantiated in the petition for
2400 involuntary outpatient placement. A copy of the certificate
2401 recommending involuntary outpatient placement completed by a
2402 qualified professional specified in subsection (2) must be
2403 attached to the petition. A copy of the proposed treatment plan
2404 must be attached to the petition. Before the petition is filed,
2405 the service provider shall certify that the services in the
2406 proposed treatment plan are available. If the necessary services
2407 are not available in the ~~patient's local~~ community where the

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2408 individual will reside ~~to respond to the person's individual~~
2409 ~~needs~~, the petition may not be filed.

2410 (c) A ~~The~~ petition for involuntary outpatient placement
2411 must be filed in the county where the individual who is the
2412 subject of the petition ~~patient~~ is located, unless the
2413 individual ~~the patient~~ is being placed from a state treatment
2414 facility, in which case the petition must be filed in the county
2415 where the individual ~~patient~~ will reside. When the petition is
2416 ~~has been~~ filed, the clerk of the court shall provide copies of
2417 the petition and the proposed treatment plan to the department,
2418 the individual ~~patient~~, the individual's ~~patient's~~ guardian or
2419 representative, the state attorney, and the public defender or
2420 ~~the patient's~~ private counsel representing the individual. A fee
2421 may not be charged for filing a petition under this subsection.

2422 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day
2423 after ~~the~~ filing ~~of~~ a petition for involuntary outpatient
2424 placement, the court shall appoint a ~~the~~ public defender to
2425 represent the individual ~~person~~ who is the subject of the
2426 petition, unless the individual ~~person~~ is otherwise represented
2427 by counsel. The clerk of the court shall immediately notify the
2428 public defender of the appointment. The public defender shall
2429 represent the individual ~~person~~ until the petition is dismissed,
2430 the court order expires, or the individual ~~patient~~ is discharged
2431 from involuntary outpatient placement. An attorney who
2432 represents the individual ~~patient~~ shall have access to the
2433 individual ~~patient~~, witnesses, and records relevant to the
2434 presentation of the individual's ~~patient's~~ case and shall
2435 represent the interests of the individual ~~patient~~, regardless of
2436 the source of payment to the attorney.

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2437 ~~(5) CONTINUANCE OF HEARING. The patient is entitled, with~~
2438 ~~the concurrence of the patient's counsel, to at least one~~
2439 ~~continuance of the hearing. The continuance shall be for a~~
2440 ~~period of up to 4 weeks.~~

2441 ~~(5)~~(6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.-

2442 (a)~~1~~. The court shall hold the hearing on involuntary
2443 outpatient placement within 5 working days after the filing of
2444 the petition, unless a continuance is granted. The hearing shall
2445 be held in the county where the petition is filed, ~~shall~~ be as
2446 convenient to the individual who is the subject of the petition
2447 ~~patient~~ as is consistent with orderly procedure, and ~~shall~~ be
2448 conducted in physical settings not likely to be injurious to the
2449 individual's ~~patient's~~ condition. If the court finds that the
2450 individual's ~~patient's~~ attendance ~~at the hearing~~ is not
2451 consistent with the individual's best interests, ~~of the patient~~
2452 and if the individual's ~~patient's~~ counsel does not object, the
2453 court may waive the presence of the individual ~~patient~~ from all
2454 or any portion of the hearing. The state attorney for the
2455 circuit in which the individual ~~patient~~ is located shall
2456 represent the state, rather than the petitioner, as the real
2457 party in interest in the proceeding.

2458 (b)~~2~~. The court may appoint a magistrate ~~master~~ to preside
2459 at the hearing. One of the professionals who executed the
2460 involuntary outpatient placement certificate shall be a witness.
2461 The individual who is the subject of the petition ~~patient~~ and
2462 his or her ~~the patient's~~ guardian or representative shall be
2463 informed by the court of the right to an independent expert
2464 examination. If the individual ~~patient~~ cannot afford such an
2465 examination, the court shall provide ~~for~~ one. The independent

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2466 expert's report ~~is shall be~~ confidential and not discoverable,
2467 unless the expert is ~~to be~~ called as a witness for the
2468 individual patient at the hearing. The court shall allow
2469 testimony from persons individuals, including family members,
2470 deemed by the court to be relevant ~~under state law~~, regarding
2471 the individual's person's prior history and how that ~~prior~~
2472 history relates to the individual's person's current condition.
2473 The testimony in the hearing must be ~~given~~ under oath, and the
2474 proceedings must be recorded. The individual patient may refuse
2475 to testify at the hearing.

2476 (c) At the hearing on involuntary outpatient placement, the
2477 court shall consider testimony and evidence regarding the
2478 competence of the individual being held to consent to treatment.
2479 If the court finds that the individual is incompetent to
2480 consent, it shall appoint a guardian advocate as provided in s.
2481 394.4598.

2482 (d) The individual who is the subject of the petition is
2483 entitled to at least one continuance of the hearing for up to 4
2484 weeks, at the individual's request.

2485 (e) The attorney representing the individual may not
2486 request a continuance of the hearing unless this is the
2487 individual's expressed desire.

2488 (6) COURT ORDER.—

2489 (a) ~~(b)1.~~ If the court concludes that the individual who is
2490 the subject of the petition patient meets the criteria for
2491 involuntary outpatient placement under ~~pursuant to~~ subsection
2492 (1), the court shall issue an order for involuntary outpatient
2493 placement. The court order may ~~shall~~ be for a ~~period of~~ up to 6
2494 months. The order must specify the nature and extent of the

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2495 individual's ~~patient's~~ mental illness. The court order ~~of the~~
2496 ~~court~~ and the treatment plan must ~~shall~~ be made part of the
2497 ~~patient's~~ clinical record. The service provider shall discharge
2498 an individual ~~a patient~~ from involuntary outpatient placement
2499 when the order expires or any time the individual ~~patient~~ no
2500 longer meets the criteria for involuntary placement. Upon
2501 discharge, the service provider shall send a certificate of
2502 discharge to the court.

2503 (b)2. The court may not order the department or the service
2504 provider to provide services if the program or service is not
2505 available in the ~~patient's~~ local community of the individual
2506 being served, if there is no space available in the program or
2507 service for the individual ~~patient~~, or if funding is not
2508 available for the program or service. A copy of the order must
2509 be sent to the Agency for Health Care Administration by the
2510 service provider within 1 working day after it is received from
2511 the court. After the placement order is issued, the service
2512 provider and the individual ~~patient~~ may modify ~~provisions of the~~
2513 treatment plan. For any material modification of the treatment
2514 plan to which the individual ~~patient~~ or the individual's
2515 ~~patient's~~ guardian advocate, if appointed, agrees ~~does agree~~,
2516 the service provider shall send notice of the modification to
2517 the court. Any material modifications of the treatment plan
2518 which are contested by the individual ~~patient~~ or the
2519 individual's ~~patient's~~ guardian advocate, if appointed, must be
2520 approved or disapproved by the court consistent with the
2521 requirements of subsection (2).

2522 (c)3. If, in the clinical judgment of a physician, the
2523 individual being served ~~patient~~ has failed or has refused to

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2524 comply with the treatment ordered by the court, and, in the
2525 clinical judgment of the physician, efforts were made to solicit
2526 compliance and the individual patient may meet the criteria for
2527 involuntary examination, the individual ~~a person~~ may be brought
2528 to a receiving facility pursuant to s. 394.463 for involuntary
2529 examination. If, after examination, the individual patient does
2530 not meet the criteria for involuntary inpatient placement under
2531 ~~pursuant to~~ s. 394.467, the individual patient must be
2532 discharged from the receiving facility. The involuntary
2533 outpatient placement order remains ~~shall remain~~ in effect unless
2534 the service provider determines that the individual patient no
2535 longer meets the criteria for involuntary outpatient placement
2536 or until the order expires. The service provider shall ~~must~~
2537 determine whether modifications should be made to the existing
2538 treatment plan and must continue to attempt to ~~continue to~~
2539 engage the individual patient in treatment. For any material
2540 modification of the treatment plan to which the individual
2541 ~~patient~~ or the individual's patient's guardian advocate, if
2542 appointed, agrees ~~does agree~~, the service provider shall send
2543 notice of the modification to the court. Any material
2544 modifications of the treatment plan which are contested by the
2545 individual patient or the individual's patient's guardian
2546 advocate, if appointed, must be approved or disapproved by the
2547 court consistent with the requirements of subsection (2).

2548 (d)(e) If, at any time before the conclusion of the initial
2549 hearing on involuntary outpatient placement, it appears to the
2550 court that the individual person does not meet the criteria for
2551 involuntary outpatient placement under this section but ~~7~~
2552 ~~instead,~~ meets the criteria for involuntary inpatient placement,

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2553 the court may order the individual ~~person~~ admitted for
2554 involuntary inpatient examination under s. 394.463. If the
2555 individual ~~person~~ instead meets the criteria for involuntary
2556 assessment, protective custody, or involuntary admission under
2557 ~~pursuant to~~ s. 397.675, the court may order the individual
2558 ~~person~~ to be admitted for involuntary assessment ~~for a period of~~
2559 ~~5 days~~ pursuant to s. 397.6811. Thereafter, all proceedings are
2560 ~~shall be~~ governed by chapter 397.

2561 ~~(d) At the hearing on involuntary outpatient placement, the~~
2562 ~~court shall consider testimony and evidence regarding the~~
2563 ~~patient's competence to consent to treatment. If the court finds~~
2564 ~~that the patient is incompetent to consent to treatment, it~~
2565 ~~shall appoint a guardian advocate as provided in s. 394.4598.~~
2566 ~~The guardian advocate shall be appointed or discharged in~~
2567 ~~accordance with s. 394.4598.~~

2568 (e) The administrator of the receiving facility or the
2569 designated department representative shall provide a copy of the
2570 court order and adequate documentation of an individual's a
2571 ~~patient's~~ mental illness to the service provider for involuntary
2572 outpatient placement. Such documentation must include any
2573 advance directives made by the individual ~~patient~~, a psychiatric
2574 evaluation of the individual ~~patient~~, and any evaluations of the
2575 individual ~~patient~~ performed by a clinical psychologist or a
2576 clinical social worker.

2577 (7) ~~PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT~~
2578 ~~PLACEMENT.~~—

2579 (a) ~~1.~~ If an individual ~~the person~~ continues to meet the
2580 criteria for involuntary outpatient placement, the service
2581 provider shall, before the expiration of the period during which

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2582 the placement ~~treatment~~ is ordered for ~~the person~~, file in the
2583 circuit court a petition for continued involuntary outpatient
2584 placement.

2585 ~~1.2.~~ The existing involuntary outpatient placement order
2586 remains in effect until disposition of ~~en~~ the petition for
2587 continued involuntary outpatient placement.

2588 ~~2.3.~~ A certificate must ~~shall~~ be attached to the petition
2589 which includes a statement from the individual's ~~person's~~
2590 physician or clinical psychologist justifying the request, a
2591 brief description of the individual's ~~patient's~~ treatment during
2592 the time he or she was involuntarily placed, and a personalized
2593 ~~an individualized~~ plan of continued treatment.

2594 ~~3.4.~~ The service provider shall develop the ~~individualized~~
2595 plan of continued treatment in consultation with the individual
2596 ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if
2597 appointed. When the petition has been filed, the clerk of the
2598 court shall provide copies of the certificate and the
2599 ~~individualized~~ plan of continued treatment to the department,
2600 the individual ~~patient~~, the individual's ~~patient's~~ guardian
2601 advocate, the state attorney, and the individual's ~~patient's~~
2602 private counsel or the public defender.

2603 (b) Within 1 court working day after the filing of a
2604 petition for continued involuntary outpatient placement, the
2605 court shall appoint the public defender to represent the
2606 individual ~~person~~ who is the subject of the petition, unless the
2607 individual ~~person~~ is otherwise represented by counsel. The clerk
2608 of the court shall immediately notify the public defender of
2609 such appointment. The public defender shall represent the
2610 individual ~~person~~ until the petition is dismissed, ~~or~~ the court

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2611 order expires, or the individual patient is discharged from
2612 involuntary outpatient placement. An ~~Any~~ attorney representing
2613 the individual must patient shall have access to the individual
2614 ~~patient~~, witnesses, and records relevant to the presentation of
2615 the individual's patient's case and shall represent the
2616 interests of the individual patient, regardless of the source of
2617 payment to the attorney.

2618 (c) The court shall inform the individual who is the
2619 subject of the petition and his or her guardian, guardian
2620 advocate, or representative of the individual's right to an
2621 independent expert examination. If the individual cannot afford
2622 such an examination, the court shall provide one.

2623 (d) ~~(e)~~ Hearings on petitions for continued involuntary
2624 outpatient placement are shall be before the circuit court. The
2625 court may appoint a magistrate master to preside at the hearing.
2626 The procedures for obtaining an order pursuant to this paragraph
2627 must shall be in accordance with subsection (5) (6), except that
2628 the time period included in paragraph (1) (e) is not applicable
2629 for in determining the appropriateness of additional periods of
2630 involuntary outpatient placement.

2631 (e) ~~(d)~~ Notice of the hearing shall be provided in
2632 accordance with as set forth in s. 394.4599. The individual
2633 being served patient and the individual's patient's attorney may
2634 agree to a period of continued outpatient placement without a
2635 court hearing.

2636 (f) ~~(e)~~ The same procedure must shall be repeated before the
2637 expiration of each additional period the individual being served
2638 ~~patient~~ is placed in treatment.

2639 (g) ~~(f)~~ If the individual in involuntary outpatient

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2640 placement ~~patient~~ has previously been found incompetent to
2641 consent to treatment, the court shall consider testimony and
2642 evidence regarding the individual's ~~patient's~~ competence.
2643 Section 394.4598 governs the discharge of the guardian advocate
2644 if the individual's ~~patient's~~ competency to consent to treatment
2645 has been restored.

2646 Section 21. Section 394.467, Florida Statutes, is amended
2647 to read:

2648 394.467 Involuntary inpatient placement.—

2649 (1) CRITERIA.—An individual ~~A person~~ may be placed in
2650 involuntary inpatient placement for treatment upon a finding of
2651 the court by clear and convincing evidence that:

2652 (a) He or she has a mental illness ~~is mentally ill~~ and
2653 because of his or her mental illness:

2654 1.a. He or she has refused voluntary placement for
2655 treatment after sufficient and conscientious explanation and
2656 disclosure of the purpose of placement for treatment; or

2657 b. He or she is unable to determine for himself or herself
2658 whether placement is necessary; and

2659 2.a. He or she is manifestly incapable of surviving alone
2660 or with the help of willing and responsible family or friends,
2661 including available alternative services, and, without
2662 treatment, is likely to suffer from neglect or refuse to care
2663 for himself or herself, and such neglect or refusal poses a real
2664 and present threat of substantial harm to his or her well-being;
2665 or

2666 b. There is substantial likelihood that in the near future
2667 he or she will inflict serious bodily harm on self or others
2668 ~~himself or herself or another person~~, as evidenced by recent

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2669 behavior causing, attempting, or threatening such harm; and

2670 (b) All available less restrictive treatment alternatives
2671 that ~~which would~~ offer an opportunity for improvement of his or
2672 her condition have been judged to be inappropriate.

2673 (2) ADMISSION TO A TREATMENT FACILITY.—An individual ~~A~~
2674 ~~patient~~ may be retained by a receiving facility or involuntarily
2675 placed in a treatment facility upon the recommendation of the
2676 administrator of the receiving facility where the individual
2677 ~~patient~~ has been examined and after adherence to the notice and
2678 hearing procedures provided in s. 394.4599. The recommendation
2679 must be supported by the opinion of a psychiatrist and the
2680 second opinion of a clinical psychologist or another
2681 psychiatrist, both of whom have personally examined the
2682 individual ~~patient~~ within the preceding 72 hours, that the
2683 criteria for involuntary inpatient placement are met. However,
2684 in a county that has a population of fewer than 50,000, if the
2685 administrator certifies that a psychiatrist or clinical
2686 psychologist is not available to provide the second opinion, the
2687 second opinion may be provided by a ~~licensed~~ physician ~~who has~~
2688 ~~postgraduate training and experience in diagnosis and treatment~~
2689 ~~of mental and nervous disorders~~ or by a psychiatric nurse. Any
2690 second opinion authorized in this subsection may be conducted
2691 through a face-to-face examination, in person or by electronic
2692 means. Such recommendation must ~~shall~~ be entered on an
2693 involuntary inpatient placement certificate that authorizes the
2694 receiving facility to retain the individual being held ~~patient~~
2695 pending transfer to a treatment facility or completion of a
2696 hearing.

2697 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—

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2698 (a) The administrator of the facility shall file a petition
2699 for involuntary inpatient placement in the court in the county
2700 where the individual patient is located. Upon filing, the clerk
2701 of the court shall provide copies to the department, the
2702 individual patient, the individual's patient's guardian or
2703 representative, and the state attorney and public defender of
2704 the judicial circuit in which the individual patient is located.
2705 A No fee may not shall be charged for the filing of a petition
2706 under this subsection.

2707 (b) A receiving or treatment facility filing a petition for
2708 involuntary inpatient placement shall send a copy of the
2709 petition to the Agency for Health Care Administration by the
2710 next working day.

2711 (4) APPOINTMENT OF COUNSEL.—

2712 (a) Within 1 court working day after the filing of a
2713 petition for involuntary inpatient placement, the court shall
2714 appoint the public defender to represent the individual person
2715 who is the subject of the petition, unless the individual person
2716 is otherwise represented by counsel. The clerk of the court
2717 shall immediately notify the public defender of such
2718 appointment. Any attorney representing the individual patient
2719 shall have access to the individual patient, witnesses, and
2720 records relevant to the presentation of the individual's
2721 patient's case and shall represent the interests of the
2722 individual patient, regardless of the source of payment to the
2723 attorney. An attorney representing an individual in involuntary
2724 placement proceedings shall represent the individual's expressed
2725 desires and must be present and actively participate in all
2726 hearings on involuntary placement.

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2727 (b) The state attorney for the circuit in which the
2728 individual is located shall represent the state rather than the
2729 petitioning facility administrator as the real party in interest
2730 in the proceeding. The state attorney shall have access to the
2731 individual's clinical record and witnesses and shall
2732 independently evaluate and confirm the allegations set forth in
2733 the petition for involuntary placement. If the allegations are
2734 substantiated, the state attorney shall vigorously prosecute the
2735 petition. If the allegations are not substantiated, the state
2736 attorney shall withdraw the petition. The state attorney shall
2737 be present and actively participate in all hearings on
2738 involuntary placement.

2739 (5) CONTINUANCE OF HEARING.—The individual ~~patient~~ is
2740 entitled, with the concurrence of the individual's ~~patient's~~
2741 counsel, to at least one continuance of the hearing. Requests
2742 for a continuance from parties other than the individual or his
2743 or her counsel may not be granted. The continuance shall be for
2744 a period of up to 4 weeks. At the time the court is considering
2745 a motion for continuance, the court shall also conduct a hearing
2746 to consider the capacity of the individual to consent to
2747 treatment if there is a pending petition for adjudication of
2748 incompetence to consent to treatment. If the court finds that
2749 the individual is not competent to consent to treatment, a
2750 guardian advocate shall be appointed at the time the involuntary
2751 placement hearing is continued to make mental health decisions
2752 for the individual.

2753 (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

2754 (a)~~1~~. The court shall hold the hearing on involuntary
2755 inpatient placement within 5 working days after the petition is

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2756 ~~filed,~~ unless a continuance is granted.

2757 1. Except for good cause documented in the court file, the
2758 hearing shall be held in the receiving or treatment facility
2759 ~~county~~ where the individual patient is located. If the hearing
2760 cannot be held in the receiving or treatment facility, it must
2761 held in a location and shall be as convenient to the individual
2762 patient as is ~~may be~~ consistent with orderly procedure and which
2763 is ~~shall be conducted in physical settings~~ not likely to be
2764 injurious to the individual's ~~patient's~~ condition. If the
2765 individual wishes to waive his or her ~~court finds that the~~
2766 patient's attendance at the hearing, the court must determine
2767 that the waiver is knowing, intelligent, and voluntary before
2768 waiving ~~is not consistent with the best interests of the~~
2769 ~~patient, and the patient's counsel does not object, the court~~
2770 ~~may waive~~ the presence of the individual patient from all or any
2771 portion of the hearing. ~~The state attorney for the circuit in~~
2772 ~~which the patient is located shall represent the state, rather~~
2773 ~~than the petitioning facility administrator, as the real party~~
2774 ~~in interest in the proceeding.~~

2775 2. The court may appoint a general or special magistrate to
2776 preside at the hearing. One of the two professionals who
2777 executed the involuntary inpatient placement certificate shall
2778 be a witness. The individual patient and the individual's
2779 ~~patient's~~ guardian or representative shall be informed by the
2780 court of the right to an independent expert examination. If the
2781 individual patient cannot afford such an examination, the court
2782 shall provide for one. The independent expert's report is ~~shall~~
2783 ~~be~~ confidential and not discoverable, unless the expert is ~~to be~~
2784 called as a witness for the individual patient at the hearing.

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2785 The testimony in the hearing must be ~~given~~ under oath, and the
2786 proceedings must be recorded. The individual ~~patient~~ may refuse
2787 to testify at the hearing.

2788 3. The court shall allow testimony from persons, including
2789 family members, deemed by the court to be relevant regarding the
2790 individual's prior history and how that prior history relates to
2791 the individual's current condition.

2792 (b) If the court concludes that the individual ~~patient~~
2793 meets the criteria for involuntary inpatient placement, it shall
2794 order that the individual ~~patient~~ be transferred to a treatment
2795 facility or, if the individual ~~patient~~ is at a treatment
2796 facility, that the individual ~~patient~~ be retained there or be
2797 treated at any other appropriate receiving or treatment
2798 facility, or that the individual ~~patient~~ receive services from a
2799 receiving or treatment facility, on an involuntary basis, for a
2800 ~~period of~~ up to 6 months. The order must ~~shall~~ specify the
2801 nature and extent of the individual's ~~patient's~~ mental illness.
2802 The facility shall discharge the individual ~~a patient~~ any time
2803 the individual ~~patient~~ no longer meets the criteria for
2804 involuntary inpatient placement, unless the individual ~~patient~~
2805 has transferred to voluntary status.

2806 (c) If at any time before ~~prior to~~ the conclusion of the
2807 hearing on involuntary inpatient placement it appears to the
2808 court that the individual ~~person~~ does not meet the criteria for
2809 involuntary inpatient placement under this section, but instead
2810 meets the criteria for involuntary outpatient placement, the
2811 court may order the individual ~~person~~ evaluated for involuntary
2812 outpatient placement pursuant to s. 394.4655. The petition and
2813 hearing procedures set forth in s. 394.4655 shall apply. If the

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2814 individual ~~person~~ instead meets the criteria for involuntary
2815 assessment, protective custody, or involuntary admission
2816 pursuant to s. 397.675, ~~then~~ the court may order the individual
2817 ~~person to be~~ admitted for involuntary assessment for up to a
2818 ~~period of~~ 5 days pursuant to s. 397.6811. Thereafter, all
2819 proceedings are ~~shall be~~ governed by chapter 397.

2820 (d) At the hearing on involuntary inpatient placement, the
2821 court shall consider testimony and evidence regarding the
2822 individual's ~~patient's~~ competence to consent to treatment. If
2823 the court finds that the individual ~~patient~~ is incompetent to
2824 consent to treatment, it shall appoint a guardian advocate as
2825 provided in s. 394.4598.

2826 (e) The administrator of the receiving facility shall
2827 provide a copy of the court order and adequate documentation of
2828 an individual's ~~a patient's~~ mental illness to the administrator
2829 of a treatment facility if the individual ~~whenever a patient~~ is
2830 ordered for involuntary inpatient placement, whether by civil or
2831 criminal court. The documentation must ~~shall~~ include any advance
2832 directives made by the individual ~~patient~~, a psychiatric
2833 evaluation of the individual ~~patient~~, and any evaluations of the
2834 individual ~~patient~~ performed by a clinical psychologist, a
2835 marriage and family therapist, a mental health counselor, or a
2836 clinical social worker. The administrator of a treatment
2837 facility may refuse admission to an individual ~~any patient~~
2838 directed to its facilities on an involuntary basis, whether by
2839 civil or criminal court order, who is not accompanied ~~at the~~
2840 ~~same time~~ by adequate orders and documentation.

2841 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
2842 PLACEMENT.—

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2843 (a) Hearings on petitions for continued involuntary
2844 inpatient placement shall be administrative hearings and shall
2845 be conducted in accordance with ~~the provisions of~~ s. 120.57(1),
2846 except that an ~~any~~ order entered by an ~~the~~ administrative law
2847 judge is ~~shall be~~ final and subject to judicial review in
2848 accordance with s. 120.68. Orders concerning an individual
2849 ~~patients~~ committed after successfully pleading not guilty by
2850 reason of insanity are ~~shall be~~ governed by ~~the provisions of~~ s.
2851 916.15.

2852 (b) If the individual patient continues to meet the
2853 criteria for involuntary inpatient placement, the administrator
2854 shall, before ~~prior to~~ the expiration of the period ~~during which~~
2855 the treatment facility is authorized to retain the individual
2856 ~~patient~~, file a petition requesting authorization for continued
2857 involuntary inpatient placement. The request must ~~shall~~ be
2858 accompanied by a statement from the individual's patient's
2859 physician or clinical psychologist justifying the request, a
2860 brief description of the individual's patient's treatment during
2861 the time he or she was involuntarily placed, and a personalized
2862 ~~an individualized~~ plan of continued treatment. Notice of the
2863 hearing must ~~shall~~ be provided in accordance with ~~as set forth~~
2864 ~~in~~ s. 394.4599. If at the hearing the administrative law judge
2865 finds that attendance at the hearing is not consistent with the
2866 individual's best interests ~~of the patient~~, the administrative
2867 law judge may waive the presence of the individual patient from
2868 all or any portion of the hearing, unless the individual
2869 ~~patient~~, through counsel, objects to the waiver of presence. The
2870 testimony in the hearing must be under oath, and the proceedings
2871 must be recorded.

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2872 (c) Unless the individual ~~patient~~ is otherwise represented
2873 or is ineligible, he or she shall be represented at the hearing
2874 on the petition for continued involuntary inpatient placement by
2875 the public defender of the circuit in which the facility is
2876 located.

2877 (d) The Division of Administrative Hearings shall inform
2878 the individual and his or her guardian, guardian advocate, or
2879 representative of the right to an independent expert
2880 examination. If the individual cannot afford such an
2881 examination, the administrative law judge shall appoint one and
2882 the county of the individual's residence shall be billed for the
2883 cost of the examination.

2884 (e) ~~(d)~~ If at a hearing it is shown that the individual
2885 ~~patient~~ continues to meet the criteria for involuntary inpatient
2886 placement, the administrative law judge shall sign the order for
2887 continued involuntary inpatient placement for a period of up to
2888 ~~not to exceed~~ 6 months. The same procedure must ~~shall~~ be
2889 repeated before ~~prior to~~ the expiration of each additional
2890 period the individual ~~patient~~ is retained.

2891 (f) ~~(e)~~ If continued involuntary inpatient placement is
2892 necessary for an individual ~~a patient~~ admitted while serving a
2893 criminal sentence, but whose sentence is about to expire, or for
2894 a minor ~~patient~~ involuntarily placed ~~while a minor but~~ who is
2895 about to reach the age of 18, the administrator shall petition
2896 the administrative law judge for an order authorizing continued
2897 involuntary inpatient placement.

2898 (g) ~~(f)~~ If the individual ~~patient~~ has been previously found
2899 incompetent to consent to treatment, the administrative law
2900 judge shall consider testimony and evidence regarding the

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2901 individual's ~~patient's~~ competence. If the administrative law
 2902 judge finds evidence that the individual ~~patient~~ is now
 2903 competent to consent to treatment, the ~~administrative law~~ judge
 2904 may issue a recommended order to the court that found the
 2905 individual ~~patient~~ incompetent to consent to treatment that the
 2906 individual's ~~patient's~~ competence be restored and that any
 2907 guardian advocate previously appointed be discharged.

2908 (8) RETURN TO FACILITY OF PATIENTS.—If an individual held
 2909 ~~When a patient~~ at a treatment facility leaves the facility
 2910 without authorization, the administrator may authorize a search
 2911 for, ~~the patient~~ and the return of, the individual ~~patient~~ to
 2912 the facility. The administrator may request the assistance of a
 2913 law enforcement agency ~~in the search for and return of the~~
 2914 ~~patient.~~

2915 Section 22. Section 394.46715, Florida Statutes, is amended
 2916 to read:

2917 394.46715 Rulemaking authority.—The department may adopt
 2918 rules to administer ~~of Children and Family Services shall have~~
 2919 ~~rulemaking authority to implement the provisions of ss. 394.455,~~
 2920 ~~394.4598, 394.4615, 394.463, 394.4655, and 394.467 as amended or~~
 2921 ~~created by this act.~~ These rules are ~~shall be~~ for the purpose of
 2922 protecting the health, safety, and well-being of individuals
 2923 ~~persons~~ examined, treated, or placed under this part ~~act~~.

2924 Section 23. Section 394.4672, Florida Statutes, is amended
 2925 to read:

2926 394.4672 Procedure for placement of veteran with federal
 2927 agency.—

2928 (1) If a ~~Whenever it is determined by the court determines~~
 2929 that an individual ~~a person~~ meets the criteria for involuntary

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2930 placement and he or she ~~it appears that such person~~ is eligible
 2931 for care or treatment by the United States Department of
 2932 Veterans Affairs or other agency of the United States
 2933 Government, the court, upon receipt of a certificate from the
 2934 United States Department of Veterans Affairs or such other
 2935 agency showing that facilities are available and that the
 2936 individual ~~person~~ is eligible for care or treatment therein, may
 2937 place that individual ~~person~~ with the United States Department
 2938 of Veterans Affairs or other federal agency. The individual
 2939 ~~person whose placement is sought~~ shall be personally served with
 2940 notice of the pending placement proceeding in the manner as
 2941 provided in this part., ~~and nothing in~~ This section does not
 2942 ~~shall~~ affect the individual's ~~his or her~~ right to appear and be
 2943 heard in the proceeding. Upon placement, the individual is
 2944 ~~person shall be~~ subject to the ~~rules and~~ regulations of the
 2945 United States Department of Veterans Affairs or other federal
 2946 agency.

2947 (2) The judgment or order of placement issued by a court of
 2948 competent jurisdiction of another state or of the District of
 2949 Columbia which places an individual, ~~placing a person~~ with the
 2950 United States Department of Veterans Affairs or other federal
 2951 agency for care or treatment has, ~~shall have~~ the same force and
 2952 effect in this state as in the jurisdiction of the court
 2953 entering the judgment or making the order., ~~and~~ The courts of
 2954 the placing state or of the District of Columbia shall retain ~~be~~
 2955 ~~deemed to have retained~~ jurisdiction over ~~of~~ the individual
 2956 ~~person~~ so placed. Consent is hereby given to the application of
 2957 the law of the placing state or district with respect to the
 2958 authority of the chief officer of any facility of the United

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2959 States Department of Veterans Affairs or other federal agency
 2960 operated in this state to retain custody or to transfer, parole,
 2961 or discharge the individual ~~person~~.

2962 (3) Upon receipt of a certificate of the United States
 2963 Department of Veterans Affairs or another ~~such other~~ federal
 2964 agency that facilities are available for the care or treatment
 2965 individuals who have mental illness ~~of mentally ill persons~~ and
 2966 that the individual ~~person~~ is eligible for that care or
 2967 treatment, the administrator of the receiving or treatment
 2968 facility may ~~cause the~~ transfer ~~of~~ that individual ~~person~~ to the
 2969 United States Department of Veterans Affairs or other federal
 2970 agency. Upon ~~effecting~~ such transfer, the committing court shall
 2971 be notified by the transferring agency. An individual may not ~~No~~
 2972 ~~person shall~~ be transferred ~~to the United States Department of~~
 2973 ~~Veterans Affairs or other federal agency~~ if he or she is
 2974 confined pursuant to the conviction of any felony or misdemeanor
 2975 or if he or she has been acquitted of the charge solely on the
 2976 ground of insanity, unless prior to transfer the court placing
 2977 the individual ~~such person~~ enters an order for the transfer
 2978 after appropriate motion and hearing and without objection by
 2979 the United States Department of Veterans Affairs.

2980 (4) An individual ~~Any person~~ transferred as provided in
 2981 this section shall be deemed to be placed with the United States
 2982 Department of Veterans Affairs or other federal agency pursuant
 2983 to the original placement.

2984 Section 24. Section 394.4674, Florida Statutes, is
 2985 repealed.

2986 Section 25. Section 394.4685, Florida Statutes, is amended
 2987 to read:

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2988 394.4685 Transfer between ~~of patients among~~ facilities.-

2989 (1) TRANSFER BETWEEN PUBLIC FACILITIES.-

2990 (a) An individual ~~A patient~~ who has been admitted to a

2991 public receiving facility, or his or her ~~the~~ family member,

2992 guardian, or guardian advocate ~~of such patient~~, may request the

2993 transfer of the individual ~~patient~~ to another public receiving

2994 facility. An individual ~~A patient~~ who has been admitted to a

2995 public treatment facility, or his or her ~~the~~ family member,

2996 guardian, or guardian advocate ~~of such patient~~, may request the

2997 transfer of the individual ~~patient~~ to another public treatment

2998 facility. Depending on the medical treatment or mental health

2999 treatment needs of the individual ~~patient~~ and the availability

3000 of appropriate facility resources, the individual ~~patient~~ may be

3001 transferred at the discretion of the department. If the

3002 department approves the transfer of an individual on involuntary

3003 status ~~patient~~, notice in accordance with ~~according to the~~

3004 ~~provisions of s. 394.4599~~ must ~~shall~~ be given before ~~prior to~~

3005 the transfer by the transferring facility. The department shall

3006 respond to the request for transfer within 2 working days after

3007 receipt of the request by the facility administrator.

3008 (b) If ~~When~~ required by the medical treatment or mental

3009 health treatment needs of the individual ~~patient~~ or the

3010 efficient use ~~utilization~~ of a public receiving or public

3011 treatment facility, an individual ~~a patient~~ may be transferred

3012 from one receiving facility to another, or one treatment

3013 facility to another, at the department's discretion, or, with

3014 the express and informed consent of the individual ~~patient~~ or

3015 the individual's ~~patient's~~ guardian or guardian advocate, to a

3016 facility in another state. Notice in accordance with ~~according~~

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3017 ~~to the provisions of s. 394.4599~~ must ~~shall~~ be given before
3018 ~~prior to~~ the transfer by the transferring facility. If prior
3019 notice is not possible, notice of the transfer must ~~shall~~ be
3020 provided as soon as practicable after the transfer.

3021 (2) TRANSFER FROM PUBLIC TO PRIVATE FACILITIES.—

3022 (a) An individual ~~A patient~~ who has been admitted to a
3023 public receiving or public treatment facility and has requested,
3024 ~~either~~ personally or through his or her guardian or guardian
3025 advocate, and is able to pay for treatment in a private facility
3026 shall be transferred at the individual's ~~patient's~~ expense to a
3027 private facility upon acceptance of the individual ~~patient~~ by
3028 the private facility.

3029 (b) A public facility may request the transfer of an
3030 individual from the facility to a private facility, and the
3031 individual may be transferred upon acceptance of the individual
3032 by the private facility.

3033 (3) TRANSFER FROM PRIVATE TO PUBLIC FACILITIES.—

3034 (a) An individual ~~A patient~~ or his or her ~~the patient's~~
3035 guardian or guardian advocate may request the transfer of the
3036 individual ~~patient~~ from a private to a public facility, and the
3037 individual ~~patient~~ may be so transferred upon acceptance of the
3038 individual ~~patient~~ by the public facility.

3039 (b) A private facility may request the transfer of an
3040 individual ~~a patient~~ from the facility to a public facility, and
3041 the individual ~~patient~~ may be ~~so~~ transferred upon acceptance of
3042 the individual ~~patient~~ by the public facility. The cost of such
3043 transfer is ~~shall be~~ the responsibility of the transferring
3044 facility.

3045 (c) A public facility must respond to a request for the

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3046 transfer of an individual ~~a patient~~ within 2 working days after
3047 receipt of the request.

3048 (4) TRANSFER BETWEEN PRIVATE FACILITIES.—An individual
3049 being held ~~A patient~~ in a private facility or his or her ~~the~~
3050 ~~patient's~~ guardian or guardian advocate may request the transfer
3051 of the individual patient to another private facility at any
3052 time, and the individual patient shall be transferred upon
3053 acceptance of the individual patient by the facility to which
3054 transfer is sought.

3055 Section 26. Section 394.469, Florida Statutes, is amended
3056 to read:

3057 394.469 Discharge of involuntary placements ~~patients~~.—

3058 (1) POWER TO DISCHARGE.—At any time an individual ~~a patient~~
3059 is found to no longer meet the criteria for involuntary
3060 placement, the administrator shall:

3061 (a) Discharge the individual patient, ~~unless the patient is~~
3062 ~~under a criminal charge, in which case the patient shall be~~
3063 ~~transferred to the custody of the appropriate law enforcement~~
3064 ~~officer;~~

3065 (b) Transfer the individual patient to voluntary status on
3066 his or her own authority or at the individual's ~~patient's~~
3067 request, unless the individual patient is under criminal charge
3068 or adjudicated incapacitated; or

3069 (c) Return an individual released from a receiving or
3070 treatment facility on voluntary or involuntary status who is
3071 charged with a crime to the custody of a law enforcement officer
3072 ~~Place an improved patient, except a patient under a criminal~~
3073 ~~charge, on convalescent status in the care of a community~~
3074 ~~facility.~~

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3075 (2) NOTICE.—Notice of discharge or transfer of an
3076 individual must be provided in accordance with ~~a patient shall~~
3077 ~~be given as provided in s. 394.4599.~~

3078 Section 27. Section 394.473, Florida Statutes, is amended
3079 to read:

3080 394.473 Attorney's fee; expert witness fee.—

3081 (1) ~~In the case of an indigent person for whom~~ An attorney
3082 ~~is~~ appointed to represent an indigent individual pursuant to the
3083 provisions of this part, ~~the attorney~~ shall be compensated by
3084 the state pursuant to s. 27.5304. ~~In the case of an indigent~~
3085 ~~person, the court may appoint a public defender. A~~ The public
3086 defender appointed to represent an indigent person may ~~shall~~
3087 receive no additional compensation other than that usually paid
3088 his or her office.

3089 (2) ~~An In the case of an indigent person for whom~~ expert
3090 whose testimony is required for an indigent individual in a
3091 court hearing pursuant to the provisions of this part act, ~~the~~
3092 ~~expert~~, except one who is classified as a full-time employee of
3093 the state or who is receiving remuneration from the state for
3094 his or her time in attendance at the hearing, shall be
3095 compensated by the state pursuant to s. 27.5304.

3096 Section 28. Section 394.475, Florida Statutes, is amended
3097 to read:

3098 394.475 Acceptance, examination, and involuntary placement
3099 ~~of Florida residents~~ from out-of-state mental health
3100 authorities.—

3101 (1) Upon the request of the state mental health authority
3102 of another state, the department may ~~is authorized to~~ accept an
3103 individual as a patient, for up to ~~a period of not more than~~ 15

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3104 days, ~~a person~~ who is and has been a bona fide resident of this
3105 state for at least ~~a period of not less than~~ 1 year.

3106 (2) An individual ~~Any person~~ received pursuant to
3107 subsection (1) shall be examined by the staff of the state
3108 facility where the individual ~~such patient~~ has been admitted
3109 ~~accepted, which examination shall be completed~~ during the 15-day
3110 period.

3111 (3) If, upon examination, the individual ~~such a person~~
3112 requires continued involuntary placement, a petition for a
3113 hearing regarding involuntary placement shall be filed with the
3114 court of the county where ~~wherein~~ the treatment facility
3115 receiving the individual ~~patient~~ is located or the county where
3116 the individual ~~patient~~ is a resident.

3117 (4) During the pendency of the examination period and the
3118 pendency of the involuntary placement proceedings, an individual
3119 ~~such person~~ may continue to be held in the treatment facility
3120 unless the court having jurisdiction enters an order to the
3121 contrary.

3122 Section 29. Section 394.4785, Florida Statutes, is amended
3123 to read:

3124 394.4785 Children and adolescents; admission and placement
3125 in mental health facilities.—

3126 (1) A child or adolescent as defined in s. 394.492 may not
3127 be admitted to a state-owned or state-operated mental health
3128 treatment facility. A child may be admitted pursuant to s.
3129 394.4625 or s. 394.467 to a crisis stabilization unit or a
3130 residential treatment center licensed under this chapter or a
3131 hospital licensed under chapter 395. The treatment center, unit,
3132 or hospital must provide the least restrictive available

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3133 treatment that is appropriate to the ~~individual~~ needs of the
 3134 child or adolescent and must adhere to the guiding principles,
 3135 system of care, and service planning provisions of ~~contained in~~
 3136 part III of this chapter.

3137 (2) A child or adolescent, as defined in s. 394.492, who is
 3138 younger than ~~person under the age of 14 years of age and~~ who is
 3139 admitted to a ~~any~~ hospital ~~licensed pursuant to chapter 395~~ may
 3140 not be admitted to a bed in a room or ward with an adult ~~patient~~
 3141 in a mental health unit or share common areas with an adult
 3142 ~~patient~~ in a mental health unit. However, an adolescent ~~a person~~
 3143 14 years of age or older may be admitted to a bed in a room or
 3144 ward in the mental health unit with an adult if the admitting
 3145 physician documents in the case record that such placement is
 3146 medically indicated or for reasons of safety. Such placement
 3147 shall be reviewed by the attending physician or a designee or
 3148 on-call physician each day and documented in the clinical ~~ease~~
 3149 record.

3150 Section 30. Subsection (2) of section 394.4786, Florida
 3151 Statutes, is amended to read:

3152 394.4786 Intent.—

3153 (2) Further, the Legislature intends that a specialty
 3154 psychiatric hospital that provides health care to specified
 3155 indigent individuals ~~patients~~ be eligible for reimbursement up
 3156 to the amount that hospital contributed to the Public Medical
 3157 Assistance Trust Fund in the previous fiscal year.

3158 Section 31. Subsection (2) of section 394.47865, Florida
 3159 Statutes, is amended to read:

3160 394.47865 South Florida State Hospital; privatization.—

3161 (2) The contractor shall operate South Florida State

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3162 Hospital as a mental health treatment facility that serves
3163 voluntarily and involuntarily committed indigent adult
3164 individuals ~~adults~~ who meet the criteria of this part ~~I of this~~
3165 ~~chapter~~ and who reside in the South Florida State Hospital
3166 service area.

3167 (a) South Florida State Hospital shall remain a participant
3168 in the mental health disproportionate share program so long as
3169 such individuals ~~the residents~~ receive eligible services.

3170 (b) The department and the contractor shall ensure that the
3171 treatment facility is operated as a part of a total continuum of
3172 care for individuals ~~persons~~ who are mentally ill. The
3173 contractor shall have as its primary goal for the treatment
3174 facility to effectively treat and assist individuals held at the
3175 facility ~~residents~~ to return to the community as quickly as
3176 possible.

3177 Section 32. Section 394.4787, Florida Statutes, is amended
3178 to read:

3179 394.4787 Definitions; ~~ss. 394.4786, 394.4787, 394.4788, and~~
3180 ~~394.4789.~~—As used in sections 394.4786-394.4789, the term this
3181 ~~section and ss. 394.4786, 394.4788, and 394.4789:~~

3182 (1) "Acute mental health services" means mental health
3183 services provided through inpatient hospitalization.

3184 (2) "Agency" means the Agency for Health Care
3185 Administration.

3186 (3) "Charity care" means that portion of hospital charges
3187 for care provided to an individual ~~a patient~~ whose family income
3188 for the 12 months preceding the determination is equal to or
3189 below 150 percent of the current federal nonfarm poverty
3190 guideline or the amount of hospital charges due from the

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3191 individual patient which exceeds 25 percent of the annual family
 3192 income and for which there is no compensation. Charity care does
 3193 ~~shall~~ not include administrative or courtesy discounts,
 3194 contractual allowances to third party payors, or failure of a
 3195 hospital to collect full charges due to partial payment by
 3196 governmental programs.

3197 (4) "Indigent" means an individual whose financial status
 3198 would qualify him or her for charity care.

3199 (5) "Operating expense" means all common and accepted costs
 3200 appropriate in developing and maintaining the operating of the
 3201 patient care facility and its activities.

3202 (6) "PMATF" means the Public Medical Assistance Trust Fund.

3203 (7) "Specialty psychiatric hospital" has the same meaning
 3204 as in ~~means a hospital licensed by the agency pursuant to s.~~
 3205 395.002(28), and includes facilities licensed under and part II
 3206 of chapter 408 as a specialty psychiatric hospital.

3207 Section 33. Subsections (1), (2), and (6) of section
 3208 394.4788, Florida Statutes, are amended to read:

3209 394.4788 Use of certain PMATF funds for the purchase of
 3210 acute care mental health services.—

3211 (1) A hospital may be eligible to be reimbursed an amount
 3212 no greater than the hospital's previous year contribution to the
 3213 PMATF for acute mental health services provided to indigent
 3214 mentally ill individuals ~~persons~~ who have been determined by the
 3215 agency or its agent to require such treatment and who:

3216 (a) Do not meet Medicaid eligibility criteria, unless the
 3217 agency makes a referral for a Medicaid eligible individual
 3218 ~~patient~~ pursuant to s. 394.4789;

3219 (b) Meet the criteria for mental illness under this part;

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3220 and

3221 (c) Meet the definition of charity care.

3222 (2) The agency shall annually calculate a per diem
3223 reimbursement rate for each specialty psychiatric hospital to be
3224 paid to the specialty psychiatric hospitals for the provision of
3225 acute mental health services provided to indigent mentally ill
3226 individuals ~~patients~~ who meet the criteria in subsection (1).
3227 After the first rate period, providers shall be notified of new
3228 reimbursement rates for each new state fiscal year by June 1.
3229 The new reimbursement rates ~~shall~~ commence on July 1.

3230 (6) Hospitals that agree to participate in the program set
3231 forth in this section and ss. 394.4786, 394.4787, and 394.4789
3232 shall agree that payment from the PMATF is payment in full for
3233 all individuals ~~patients~~ for which reimbursement is received
3234 under this section and ss. 394.4786, 394.4787, and 394.4789,
3235 until the funds for this program are no longer available.

3236 Section 34. Section 394.4789, Florida Statutes, is amended
3237 to read:

3238 394.4789 Establishment of referral process and eligibility
3239 determination.—

3240 (1) The department shall adopt by rule a referral process
3241 that provides ~~which shall provide~~ each participating specialty
3242 psychiatric hospital with a system for accepting ~~into the~~
3243 ~~hospital's care~~ indigent mentally ill individuals ~~persons~~
3244 referred by the department. It is the intent of the Legislature
3245 that a hospital that ~~which~~ seeks payment under s. 394.4788 shall
3246 accept referrals from the department. However, a hospital may
3247 ~~shall have the right to~~ refuse the admission of an individual ~~a~~
3248 ~~patient~~ due to lack of functional bed space or lack of services

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3249 appropriate to a patient's specific treatment and is not ~~ne~~
3250 ~~hospital shall be~~ required to accept referrals if the costs for
3251 treating the referred patient are no longer reimbursable because
3252 the hospital has reached the level of contribution made to the
3253 PMATF in the previous fiscal year. Furthermore, a hospital that
3254 does not seek compensation for indigent mentally ill patients
3255 under the provisions of this part is ~~act shall~~ not be obliged to
3256 accept department referrals, notwithstanding any agreements it
3257 may have entered into with the department. The right of refusal
3258 in this subsection does ~~shall~~ not affect a hospital's
3259 requirement to provide emergency care pursuant to s. 395.1041 or
3260 other state or federal law ~~statutory requirements related to the~~
3261 ~~provision of emergency care.~~

3262 (2) The department shall adopt by rule a patient
3263 eligibility form and is ~~shall be~~ responsible for eligibility
3264 determination. However, the department may contract with
3265 participating psychiatric hospitals for eligibility
3266 determination. The eligibility form must ~~shall~~ provide the
3267 mechanism for determining a patient's eligibility according to
3268 the requirements of s. 394.4788(1).

3269 (a) A specialty psychiatric hospital is ~~shall be~~ eligible
3270 for reimbursement only if ~~when~~ an eligibility form has been
3271 completed for each indigent mentally ill individual ~~person~~ for
3272 whom reimbursement is sought.

3273 (b) As part of eligibility determination, every effort
3274 shall be made by the hospital to determine if any third party
3275 insurance coverage is available.

3276 Section 35. Paragraph (a) of subsection (3) of section
3277 39.407, Florida Statutes, is amended to read:

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3278 39.407 Medical, psychiatric, and psychological examination
3279 and treatment of child; physical, mental, or substance abuse
3280 examination of person with or requesting child custody.—

3281 (3) (a) 1. Except as ~~otherwise~~ provided in subparagraph (b) 1.
3282 or paragraph (e), before the department provides psychotropic
3283 medications to a child in its custody, the prescribing physician
3284 shall attempt to obtain express and informed consent, as defined
3285 in s. 394.455 ~~394.455(9)~~ and as described in s. 394.459(3)
3286 ~~394.459(3)(a)~~, from the child's parent or legal guardian. The
3287 department shall ~~must take steps necessary to~~ facilitate the
3288 inclusion of the parent in the child's consultation with the
3289 physician. However, if the parental rights of the parent have
3290 been terminated, the parent's location or identity is unknown or
3291 cannot reasonably be ascertained, or the parent declines to give
3292 express and informed consent, the department may, after
3293 consultation with the prescribing physician, seek court
3294 authorization to provide the psychotropic medications to the
3295 child. Unless parental rights have been terminated and if it is
3296 possible to do so, the department shall continue to involve the
3297 parent in the decisionmaking process regarding the provision of
3298 psychotropic medications. If, at any time, a parent whose
3299 parental rights have not been terminated provides express and
3300 informed consent to the provision of a psychotropic medication,
3301 the requirements of this section that the department seek court
3302 authorization do not apply to that medication until such time as
3303 the parent no longer consents.

3304 2. If ~~Any time~~ the department seeks a medical evaluation to
3305 determine the need to initiate or continue a psychotropic
3306 medication for a child, the department must provide to the

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3307 evaluating physician all pertinent medical information known to
3308 the department concerning that child.

3309 Section 36. Subsection (3) of section 394.495, Florida
3310 Statutes, is amended to read:

3311 394.495 Child and adolescent mental health system of care;
3312 programs and services.—

3313 (3) Assessments shall ~~must~~ be performed by:

3314 (a) A clinical psychologist, clinical social worker,
3315 physician, psychiatric nurse, or psychiatrist ~~professional~~ as
3316 defined in s. 394.455 ~~394.455(2), (4), (21), (23), or (24);~~

3317 (b) A professional licensed under chapter 491; or

3318 (c) A person who is under the direct supervision of a
3319 professional listed in paragraph (a) or paragraph (b) ~~as defined~~
3320 ~~in s. 394.455(2), (4), (21), (23), or (24) or a professional~~
3321 ~~licensed under chapter 491.~~

3322
3323 The department shall adopt by rule statewide standards for
3324 mental health assessments, which are ~~must be~~ based on current
3325 relevant professional and accreditation standards.

3326 Section 37. Subsection (6) of section 394.496, Florida
3327 Statutes, is amended to read:

3328 394.496 Service planning.—

3329 (6) A clinical psychologist, clinical social worker,
3330 physician, psychiatric nurse, or psychiatrist ~~professional~~ as
3331 defined in s. 394.455, ~~394.455(2), (4), (21), (23), or (24)~~ or a
3332 professional licensed under chapter 491, must be included among
3333 those persons developing the services plan.

3334 Section 38. Subsection (6) of section 394.9085, Florida
3335 Statutes, is amended to read:

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3336 394.9085 Behavioral provider liability.-

3337 (6) For purposes of this section, the terms "detoxification
3338 services," "addictions receiving facility," and "receiving
3339 facility" have the same meanings as ~~those~~ provided in ss.
3340 397.311(18)(a)4., 397.311(18)(a)1., and 394.455 ~~394.455(26)~~,
3341 respectively.

3342 Section 39. Paragraph (d) of subsection (1) of section
3343 419.001, Florida Statutes, is amended to read:

3344 419.001 Site selection of community residential homes.-

3345 (1) For the purposes of this section, the following
3346 definitions shall apply:

3347 (d) "Resident" means any of the following: a frail elder as
3348 defined in s. 429.65; a physically disabled or handicapped
3349 person as defined in s. 760.22(7)(a); a developmentally disabled
3350 person as defined in s. 393.063; a nondangerous individual who
3351 has a mental illness as defined in s. 394.455 ~~mentally ill~~
3352 ~~person as defined in s. 394.455(18)~~; or a child who is found to
3353 be dependent as defined in s. 39.01 or s. 984.03, or a child in
3354 need of services as defined in s. 984.03 or s. 985.03.

3355 Section 40. Subsection (7) of section 744.704, Florida
3356 Statutes, is amended to read:

3357 744.704 Powers and duties.-

3358 (7) A public guardian may ~~shall~~ not commit a ward to a
3359 mental health treatment facility, as defined in s. 394.455
3360 ~~394.455(32)~~, without an involuntary placement proceeding as
3361 provided by law.

3362 Section 41. This act shall take effect July 1, 2010.