CHAPTER 2000-265

Committee Substitute for Senate Bill No. 682

An act relating to mental health services for children and adolescents; amending s. 39.407, F.S.; revising provisions governing the medical, psychiatric, and psychological examination and treatment of children; prescribing procedures for the admission of children or adolescents to residential treatment centers for residential mental health treatment; amending s. 394.4785, F.S.; prohibiting children and adolescents from admission to state mental health treatment facilities; requiring residential treatment centers for children and adolescents to adhere to certain standards; amending s. 394.67, F.S.; defining the term "residential treatment center for children and adolescents"; amending s. 394.875, F.S.; requiring the licensure of residential treatment centers for children and adolescents; requiring the Department of Children and Family Services to adopt rules; amending s. 409.175, F.S.; specifying that residential child-caring agencies do not include residential treatment centers for children and adolescents; providing an effective date.

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

Section 1. Section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical or mental examination of parent or person requesting custody of child.—

(1) When any child is removed from the home and maintained in an out-of-home placement, the department is authorized to have a medical screening performed on the child without authorization from the court and without consent from a parent or legal custodian. Such medical screening shall be performed by a licensed health care professional and shall be to examine the child for injury, illness, and communicable diseases and to determine the need for immunization. The department shall by rule establish the invasiveness of the medical procedures authorized to be performed under this subsection. In no case does this subsection authorize the department to consent to medical treatment for such children.

(2) When the department has performed the medical screening authorized by subsection (1), or when it is otherwise determined by a licensed health care professional that a child who is in an out-of-home placement, but who has not been committed to the department, is in need of medical treatment, including the need for immunization, consent for medical treatment shall be obtained in the following manner:

(a)1. Consent to medical treatment shall be obtained from a parent or legal custodian of the child; or

2. A court order for such treatment shall be obtained.

(b) If a parent or legal custodian of the child is unavailable and his or her whereabouts cannot be reasonably ascertained, and it is after normal working hours so that a court order cannot reasonably be obtained, an authorized agent of the department shall have the authority to consent to necessary medical treatment, including immunization, for the child. The authority of the department to consent to medical treatment in this circumstance shall be limited to the time reasonably necessary to obtain court authorization.

(c) If a parent or legal custodian of the child is available but refuses to consent to the necessary treatment, including immunization, a court order shall be required unless the situation meets the definition of an emergency in s. 743.064 or the treatment needed is related to suspected abuse, abandonment, or neglect of the child by a parent, caregiver, or legal custodian. In such case, the department shall have the authority to consent to necessary medical treatment. This authority is limited to the time reasonably necessary to obtain court authorization.

In no case shall the department consent to sterilization, abortion, or termination of life support.

(3)(a) A judge may order a child in an out-of-home placement to be examined by a licensed health care professional.

(b) The judge may also order such child to be evaluated by a psychiatrist or a psychologist~~, by a district school board educational needs assessment team,~~ or, if a developmental disability is suspected or alleged, by the developmental disability diagnostic and evaluation team of the department. If it is necessary to place a child in a residential facility for such evaluation, ~~then~~ the criteria and procedure established in s. 394.463(2) or chapter 393 shall be used, whichever is applicable.

(c) The judge may also order such child to be evaluated by a district school board educational needs assessment team. The educational needs assessment provided by the district school board educational needs assessment team shall include, but not be limited to, reports of intelligence and achievement tests, screening for learning disabilities and other handicaps, and screening for the need for alternative education as defined in s. 230.23.

(4) A judge may order a child in an out-of-home placement to be treated by a licensed health care professional based on evidence that the child should receive treatment. The judge may also order such child to receive mental health or developmental disabilities ~~retardation~~ services from a psychiatrist, psychologist, or other appropriate service provider. Except as provided in subsection (5), if it is necessary to place the child in a residential facility for such services, ~~then~~ the procedures and criteria established in s. 394.467 or chapter 393 shall be used, whichever is applicable. A child may be provided developmental disabilities or mental health ~~or retardation~~ services in emergency situations, pursuant to the procedures and criteria contained in s. 394.463(1) or chapter 393, whichever is applicable.

(5) Children who are in the legal custody of the department may be placed by the department in a residential treatment center licensed under

s. 394.875 or a hospital licensed under chapter 395 for residential mental health treatment only pursuant to this section or may be placed by the court in accordance with an order of involuntary examination or involuntary placement entered pursuant to s. 394.463 or s. 394.467. All children placed in a residential treatment program under this subsection must have a guardian ad litem appointed.

(a) As used in this subsection, the term:

1. "Residential treatment" means placement for observation, diagnosis, or treatment of an emotional disturbance in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395.

2. "Least-restrictive alternative" means the treatment and conditions of treatment that, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the child or adolescent or others from physical injury.

3. "Suitable for residential treatment" or "suitability" means a determination concerning a child or adolescent with an emotional disturbance as defined in s. 394.492(5) or a serious emotional disturbance as defined in s. 394.492(6) that each of the following criteria is met:

a. The child requires residential treatment.

b. The child is in need of a residential treatment program and is expected to benefit from mental health treatment.

c. An appropriate, less restrictive alternative to residential treatment is unavailable.

(b) Whenever the department believes that a child in its legal custody is emotionally disturbed and may need residential treatment, an examination and suitability assessment must be conducted by a qualified evaluator who is appointed by the Agency for Health Care Administration. This suitability assessment must be completed before the placement of the child in a residential treatment center for emotionally disturbed children and adolescents or a hospital. The qualified evaluator must be a psychiatrist or a psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program.

(c) Before a child is admitted under this subsection, the child shall be assessed for suitability for residential treatment by a qualified evaluator who has conducted a personal examination and assessment of the child and has made written findings that:

1. The child appears to have an emotional disturbance serious enough to require residential treatment and is reasonably likely to benefit from the treatment.

2. The child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

3. All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable.

A copy of the written findings of the evaluation and suitability assessment must be provided to the department and to the guardian ad litem, who shall have the opportunity to discuss the findings with the evaluator.

(d) Immediately upon placing a child in a residential treatment program under this section, the department must notify the guardian ad litem and the court having jurisdiction over the child and must provide the guardian ad litem and the court with a copy of the assessment by the qualified evaluator.

(e)1. Within 10 days after the admission of a child to a residential treatment program, the director of the residential treatment program or the director's designee must ensure that an individualized plan of treatment has been prepared by the program and has been explained to the child, to the department and to the guardian ad litem, and submitted to the department. The child must be involved in the preparation of the plan to the maximum feasible extent consistent with his or her ability to understand and participate, and the guardian ad litem and the child's foster parents must be involved to the maximum extent consistent with the child's treatment needs. The plan must include a preliminary plan for residential treatment and aftercare upon completion of residential treatment. The plan must include specific behavioral and emotional goals against which the success of the residential treatment may be measured. A copy of the plan must be provided to the child, to the guardian ad litem, and to the department.

(f) Within 30 days after admission, the residential treatment program must review the appropriateness and suitability of the child's placement in the program. The residential treatment program must determine whether the child is receiving benefit towards the treatment goals and whether the child could be treated in a less restrictive treatment program. The residential treatment program shall prepare a written report of its findings and submit the report to the guardian ad litem and to the department. The department must submit the report to the court. The report must include a discharge plan for the child. The residential treatment program must continue to evaluate the child's treatment progress every 30 days thereafter and must include its findings in a written report submitted to the department. The department may not reimburse a facility until the facility has submitted every written report that is due.

(g)1. The department must submit, at the beginning of each month, to the court having jurisdiction over the child a written report regarding the child's progress towards achieving the goals specified in the individualized plan of treatment.

2. The court must conduct a hearing to review the status of the child's residential treatment plan no later than 3 months after the child's admis-

sion to the residential treatment program. An independent review of the child's progress towards achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court before its 3-month review.

3. For any child in residential treatment at the time a judicial review is held pursuant to s. 39.701, the child's continued placement in residential treatment must be a subject of the judicial review.

4. If at any time the court determines that the child is not suitable for continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet his or her needs.

(h) After the initial 3-month review, the court must conduct a review of the child's residential treatment plan every 90 days.

(i) The department must adopt rules for implementing timeframes for the completion of suitability assessments by qualified evaluators and a procedure that includes timeframes for completing the 3-month independent review by the qualified evaluators of the child's progress towards achieving the goals and objectives of the treatment plan which review must be submitted to the court. The Agency for Health Care Administration must adopt rules for the registration of qualified evaluators, the procedure for selecting the evaluators to conduct the reviews required under this section, and a reasonable, cost-efficient fee schedule for qualified evaluators.

(6)~~(5)~~ When a child is in an out-of-home placement, a licensed health care professional shall be immediately called if there are indications of physical injury or illness, or the child shall be taken to the nearest available hospital for emergency care.

(7)~~(6)~~ Except as otherwise provided herein, nothing in this section shall be deemed to eliminate the right of a parent, legal custodian, or the child to consent to examination or treatment for the child.

(8)~~(7)~~ Except as otherwise provided herein, nothing in this section shall be deemed to alter the provisions of s. 743.064.

(9)~~(8)~~ A court shall not be precluded from ordering services or treatment to be provided to the child by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a church or religious organization, when required by the child's health and when requested by the child.

(10)~~(9)~~ Nothing in this section shall be construed to authorize the permanent sterilization of the child unless such sterilization is the result of or incidental to medically necessary treatment to protect or preserve the life of the child.

(11)~~(10)~~ For the purpose of obtaining an evaluation or examination, or receiving treatment as authorized pursuant to this section, no child alleged to be or found to be dependent shall be placed in a detention home or other

program used primarily for the care and custody of children alleged or found to have committed delinquent acts.

(12)~~(11)~~ The parents or legal custodian of a child in an out-of-home placement remain financially responsible for the cost of medical treatment provided to the child even if either one or both of the parents or if the legal custodian did not consent to the medical treatment. After a hearing, the court may order the parents or legal custodian, if found able to do so, to reimburse the department or other provider of medical services for treatment provided.

(13)~~(12)~~ Nothing in this section alters the authority of the department to consent to medical treatment for a dependent child when the child has been committed to the department and the department has become the legal custodian of the child.

(14)~~(13)~~ At any time after the filing of a shelter petition or petition for dependency, when the mental or physical condition, including the blood group, of a parent, caregiver, legal custodian, or other person requesting custody of a child is in controversy, the court may order the person to submit to a physical or mental examination by a qualified professional. The order may be made only upon good cause shown and pursuant to notice and procedures as set forth by the Florida Rules of Juvenile Procedure.

Section 2. Section 394.4785, Florida Statutes, is amended to read:

394.4785 Children and adolescents ~~Minors~~; admission and placement in mental facilities.—

(1) A child or adolescent as defined in s. 394.492 may not be admitted to a state-owned or state-operated mental health treatment facility. A child may be admitted pursuant to s. 394.4625 or s. 394.467 to a crisis stabilization unit or a residential treatment center licensed under chapter 394 or a hospital licensed under chapter 395. The treatment center, unit, or hospital must provide the least-restrictive available treatment that is appropriate to the individual needs of the child or adolescent and must adhere to the guiding principles, system of care, and service planning provisions contained in part III of chapter 394. ~~(a) A minor who is admitted to a state mental hospital and placed in the general population or in a specialized unit for children or adolescents shall reside in living quarters separate from adult patients, and a minor who has not attained the age of 14 shall reside in living quarters separate from minors who are 14 years of age or older.~~

(2)~~(b)~~ A person ~~minor~~ under the age of 14 who is admitted to any hospital licensed pursuant to chapter 395 may ~~shall~~ not be admitted to a bed in a room or ward with an adult patient in a mental health unit or share common areas with an adult patient in a mental health unit. However, a person ~~minor~~ 14 years of age or older may be admitted to a bed in a room or ward in the mental health unit with an adult if the admitting physician documents in the case record that such placement is medically indicated or for reasons of safety. Such placement shall be reviewed by the attending physician or a designee or on-call physician each day and documented in the case record.

~~(2) In all cases involving the admission of minors to a state mental hospital, the case record shall document that a good faith effort was made to place the minor in a less restrictive form of treatment. Admission to a state mental hospital shall be regarded as the last and only treatment option available. Notwithstanding the provision of paragraph (1)(a), an individual under the age of 18 may be housed in the general population if the hospital multidisciplinary treatment and rehabilitation team has reviewed the patient and has documented in the case record that such placement is necessary for reasons of safety. Such patients placed in the general population must be reviewed by this team every 30 days and recertified as appropriate for placement in the general population.~~

Section 3. Present subsections (18), (19), and (20) of section 394.67, Florida Statutes, are redesignated as subsections (19), (20), and (21), respectively, and a new subsection (18) is added to that section to read:

394.67 Definitions.—As used in this part, the term:

(18) "Residential treatment center for children and adolescents" means a 24-hour residential program, including a therapeutic group home, which provides mental health services to emotionally disturbed children or adolescents as defined in s. 394.492(5) or (6) and which is a private for-profit or not-for-profit corporation under contract with the department which offers a variety of treatment modalities in a more restrictive setting.

Section 4. Section 394.875, Florida Statutes, is amended to read:

394.875 Crisis stabilization units, ~~and~~ residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required; penalties.—

(1)(a) The purpose of a crisis stabilization unit is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs. Crisis stabilization units may screen, assess, and admit for stabilization persons who present themselves to the unit and persons who are brought to the unit under s. 394.463. Clients may be provided 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services. Crisis stabilization units shall provide services regardless of the client's ability to pay and shall be limited in size to a maximum of 30 beds.

(b) The purpose of a residential treatment facility is to be a part of a comprehensive treatment program for mentally ill individuals in a community-based residential setting.

(c) The purpose of a residential treatment center for children and adolescents is to provide mental health assessment and treatment services pursuant to ss. 394.491, 394.495, and 394.496 to children and adolescents who meet the target population criteria specified in s. 394.493(1)(a), (b), or (c).

(2) It is unlawful for any entity to hold itself out as a crisis stabilization unit, ~~or~~ a residential treatment facility, or a residential treatment center for children and adolescents, or to act as a crisis stabilization unit, ~~or~~ a residen-

tial treatment facility, or a residential treatment center for children and adolescents, unless it is licensed by the agency pursuant to this chapter.

(3) Any person who violates subsection (2) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) The agency may maintain an action in circuit court to enjoin the unlawful operation of a crisis stabilization unit, ~~or~~ a residential treatment facility, or a residential treatment center for children and adolescents if the agency first gives the violator 14 days' notice of its intention to maintain such action and if the violator fails to apply for licensure within such 14-day period.

(5) Subsection (2) does not apply to:

(a) Homes for special services licensed under chapter 400; or

(b) Nursing homes licensed under chapter 400.~~; or~~

(c) Comprehensive transitional education programs ~~Residential child caring facilities~~ licensed under s. 393.067 ~~s. 409.175~~.

(6) The department, in consultation with the agency, may establish multiple license classifications for residential treatment facilities.

(7) The agency may not issue a license to a crisis stabilization unit unless the unit receives state mental health funds and is affiliated with a designated public receiving facility.

(8) The agency may issue a license for a crisis stabilization unit or short-term residential treatment facility, certifying the number of authorized beds for such facility as indicated by existing need and available appropriations. The agency may disapprove an application for such a license if it determines that a facility should not be licensed pursuant to the provisions of this chapter. Any facility operating beds in excess of those authorized by the agency shall, upon demand of the agency, reduce the number of beds to the authorized number, forfeit its license, or provide evidence of a license issued pursuant to chapter 395 for the excess beds.

(9) A children's crisis stabilization unit which does not exceed 20 licensed beds and which provides separate facilities or a distinct part of a facility, separate staffing, and treatment exclusively for minors may be located on the same premises as a crisis stabilization unit serving adults. The department, in consultation with the agency, shall adopt rules governing facility construction, staffing and licensure requirements, and the operation of such units for minors.

(10) The department, in consultation with the agency, must adopt rules governing a residential treatment center for children and adolescents which specify licensure standards for: admission; length of stay; program and staffing; discharge and discharge planning; treatment planning; seclusion, restraints, and time-out; rights of patients under s. 394.459; use of psychotropic medications; and standards for the operation of such centers.

(11)~~(10)~~ Notwithstanding the provisions of subsection (8), crisis stabilization units may not exceed their licensed capacity by more than 10 percent, nor may they exceed their licensed capacity for more than 3 consecutive working days or for more than 7 days in 1 month.

(12)~~(11)~~ Notwithstanding the other provisions of this section, any facility licensed under chapters 396 and 397 for detoxification, residential level I care, and outpatient treatment may elect to license concurrently all of the beds at such facility both for that purpose and as a long-term residential treatment facility pursuant to this section, if all of the following conditions are met:

(a) The licensure application is received by the department prior to January 1, 1993.

(b) On January 1, 1993, the facility was licensed under chapters 396 and 397 as a facility for detoxification, residential level I care, and outpatient treatment of substance abuse.

(c) The facility restricted its practice to the treatment of law enforcement personnel for a period of at least 12 months beginning after January 1, 1992.

(d) The number of beds to be licensed under chapter 394 is equal to or less than the number of beds licensed under chapters 396 and 397 as of January 1, 1993.

(e) The licensee agrees in writing to a condition placed upon the license that the facility will limit its treatment exclusively to law enforcement personnel and their immediate families who are seeking admission on a voluntary basis and who are exhibiting symptoms of posttraumatic stress disorder or other mental health problems, including drug or alcohol abuse, which are directly related to law enforcement work and which are amenable to verbal treatment therapies; the licensee agrees to coordinate the provision of appropriate postresidential care for discharged individuals; and the licensee further agrees in writing that a failure to meet any condition specified in this paragraph shall constitute grounds for a revocation of the facility's license as a residential treatment facility.

(f) The licensee agrees that the facility will meet all licensure requirements for a residential treatment facility, including minimum standards for compliance with lifesafety requirements, except those licensure requirements which are in express conflict with the conditions and other provisions specified in this subsection.

(g) The licensee agrees that the conditions stated in this subsection must be agreed to in writing by any person acquiring the facility by any means.

Any facility licensed under this subsection is not required to provide any services to any persons except those included in the specified conditions of licensure, and is exempt from any requirements related to the 60-day or greater average length of stay imposed on community-based residential treatment facilities otherwise licensed under this chapter.

(13)~~(12)~~ Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee and financial officer, or other similarly titled individual who is responsible for the financial operation of the facility, including billings for client care and services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(e) Each applicant must submit to the agency, with its application, a description and explanation of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and control interests under the Medicaid or Medicare programs shall be accepted in lieu of this submission.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or

organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

(h) The agency may deny or revoke licensure if the applicant:

1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or

2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).

(i) An application for license renewal must contain the information required under paragraphs (e) and (f).

Section 5. Paragraph (j) of subsection (2) of section 409.175, Florida Statutes, is amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies.—

(2) As used in this section, the term:

(j) "Residential child-caring agency" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under s. 393.067 or s. 394.875 or chapter 397.

Section 6. Nothing in this act excuses or relieves the department of any other obligations to abused, neglected or abandoned children in its custody.

Section 7. This act shall take effect October 1, 2000.

Approved by the Governor June 14, 2000.

Filed in Office Secretary of State June 14, 2000.