

CHAPTER 2015-100

Committee Substitute for Committee Substitute for House Bill No. 21

An act relating to substance abuse services; amending s. 397.311, F.S.; providing definitions; conforming a cross-reference; creating s. 397.487, F.S.; providing legislative findings and intent; requiring the Department of Children and Families to create a voluntary certification program for recovery residences; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish procedures for certifying recovery residences that meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring a credentialing entity to conduct onsite inspections of a recovery residence; requiring background screening of owners, directors, and chief financial officers of a recovery residence; providing for denial, suspension, or revocation of certification; providing a criminal penalty for falsely advertising a recovery residence as a “certified recovery residence”; creating s. 397.4871, F.S.; providing legislative intent; requiring the department to create a voluntary certification program for recovery residence administrators; directing the department to approve at least one credentialing entity by a specified date to develop and administer the certification program; requiring an approved credentialing entity to establish a process for certifying recovery residence administrators who meet certain qualifications; requiring an approved credentialing entity to establish certain fees; requiring background screening of applicants for recovery residence administrator certification; providing for suspension or revocation of certification; providing a criminal penalty for falsely advertising oneself as a “certified recovery residence administrator”; creating s. 397.4872, F.S.; providing exemptions from disqualifying offenses; requiring credentialing entities to provide the department with a list of all certified recovery residences and recovery residence administrators by a date certain; requiring the department to publish the list on its website; allowing recovery residences and recovery residence administrators to be excluded from the list upon written request to the department; amending s. 397.407, F.S.; providing conditions for a licensed service provider to refer patients to a certified recovery residence or a recovery residence owned and operated by the licensed service provider; defining the term “refer”; amending ss. 212.055, 394.9085, 397.405, 397.416, and 440.102, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (4) and (5), subsections (6) through (28), and subsections (29) through (39) of section 397.311, Florida Statutes, are renumbered as subsections (7) and (8), subsections (10) through (32), and

subsections (35) through (45), respectively, present subsections (7) and (32) are amended, and new subsections (4), (5), (6), (9), (33), and (34) are added to that section, to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(4) “Certificate of compliance” means a certificate that is issued by a credentialing entity to a recovery residence or a recovery residence administrator.

(5) “Certified recovery residence” means a recovery residence that holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator.

(6) “Certified recovery residence administrator” means a recovery residence administrator who holds a valid certificate of compliance.

(9) “Credentialing entity” means a nonprofit organization that develops and administers professional, facility, or organization certification programs according to applicable nationally recognized certification or psychometric standards.

(11)(7) “Director” means the chief administrative or executive officer of a service provider or recovery residence.

(33) “Recovery residence” means a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

(34) “Recovery residence administrator” means the person responsible for overall management of the recovery residence, including, but not limited to, the supervision of residents and staff employed by, or volunteering for, the residence.

(38)(32) “Service component” or “component” means a discrete operational entity within a service provider which is subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment described in subsection (22) (18).

Section 2. Section 397.487, Florida Statutes, is created to read:

397.487 Voluntary certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate

housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary certification program for recovery residences. The approved credentialing entity shall:

(a) Establish recovery residence certification requirements.

(b) Establish procedures to:

1. Administer the application, certification, recertification, and disciplinary processes.

2. Monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements.

3. Interview and evaluate residents, employees, and volunteer staff on their knowledge and application of certification requirements.

(c) Provide training for owners, managers, and staff.

(d) Develop a code of ethics.

(e) Establish application, inspection, and annual certification renewal fees. The application fee may not exceed \$100. Any onsite inspection fee shall reflect actual costs for inspections. The annual certification renewal fee may not exceed \$100.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(a) A policy and procedures manual containing:

1. Job descriptions for all staff positions.

2. Drug-testing procedures and requirements.

3. A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.

4. Policies to support a resident’s recovery efforts.

5. A good neighbor policy to address neighborhood concerns and complaints.

(b) Rules for residents.

(c) Copies of all forms provided to residents.

(d) Intake procedures.

(e) Sexual predator and sexual offender registry compliance policy.

(f) Relapse policy.

(g) Fee schedule.

(h) Refund policy.

(i) Eviction procedures and policy.

(j) Code of ethics.

(k) Proof of insurance.

(l) Proof of background screening.

(m) Proof of satisfactory fire, safety, and health inspections.

(4) A certified recovery residence must be actively managed by a certified recovery residence administrator. All applications for certification must include the name of the certified recovery residence administrator who will be actively managing the applicant recovery residence.

(5) Upon receiving a complete application, a credentialing entity shall conduct an onsite inspection of the recovery residence.

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

(7) A credentialing entity shall issue a certificate of compliance upon approval of the recovery residence's application and inspection. The certification shall automatically terminate 1 year after issuance if not renewed.

(8) Onsite followup monitoring of a certified recovery residence may be conducted by the credentialing entity to determine continuing compliance with certification requirements. The credentialing entity shall inspect each certified recovery residence at least annually to ensure compliance.

(a) A credentialing entity may suspend or revoke a certification if the recovery residence is not in compliance with any provision of this section or has failed to remedy any deficiency identified by the credentialing entity within the time period specified.

(b) A certified recovery residence must notify the credentialing entity within 3 business days after the removal of the recovery residence's certified recovery residence administrator due to termination, resignation, or any other reason. The recovery residence has 30 days to retain a certified recovery residence administrator. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to comply with this paragraph.

(c) If any owner, director, or chief financial officer of a certified recovery residence is arrested for or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) while acting in that capacity, the certified recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after such removal. The credentialing entity shall revoke the certificate of compliance of a recovery residence that fails to meet these requirements.

(d) A credentialing entity shall revoke a recovery residence's certificate of compliance if the recovery residence provides false or misleading information to the credentialing entity at any time.

(9) A person may not advertise to the public, in any way or by any medium whatsoever, any recovery residence as a "certified recovery residence" unless such recovery residence has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 397.4871, Florida Statutes, is created to read:

397.4871 Recovery residence administrator certification.—

(1) It is the intent of the Legislature that a recovery residence administrator voluntarily earn and maintain certification from a credentialing entity approved by the Department of Children and Families. The Legislature further intends that certification ensure that an administrator has the competencies necessary to appropriately respond to the needs of residents, to maintain residence standards, and to meet residence certification requirements.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a voluntary credentialing program for administrators. The department shall approve any credentialing entity that the department endorses pursuant to s. 397.321(16) if the credentialing entity also meets the requirements of this section. The approved credentialing entity shall:

(a) Establish recovery residence administrator core competencies, certification requirements, testing instruments, and recertification requirements.

(b) Establish a process to administer the certification application, award, and maintenance processes.

(c) Develop and administer:

1. A code of ethics and disciplinary process.

2. Biennial continuing education requirements and annual certification renewal requirements.

3. An education provider program to approve training entities that are qualified to provide precertification training to applicants and continuing education opportunities to certified persons.

(3) A credentialing entity shall establish a certification program that:

(a) Is directly related to the core competencies.

(b) Establishes minimum requirements in each of the following categories:

1. Training.

2. On-the-job work experience.

3. Supervision.

4. Testing.

5. Biennial continuing education.

(c) Requires adherence to a code of ethics and provides for a disciplinary process that applies to certified persons.

(d) Approves qualified training entities that provide precertification training to applicants and continuing education to certified recovery residence administrators. To avoid a conflict of interest, a credentialing entity or its affiliate may not deliver training to an applicant or continuing education to a certificateholder.

(4) A credentialing entity shall establish application, examination, and certification fees and an annual certification renewal fee. The application, examination, and certification fee may not exceed \$225. The annual certification renewal fee may not exceed \$100.

(5) All applicants are subject to level 2 background screening as provided under chapter 435. An applicant is ineligible, and a credentialing entity shall deny the application, if the applicant has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872. In accordance with s. 435.04, the department shall notify the

credentialing agency of the applicant's eligibility based on the results of his or her background screening.

(6) The credentialing entity shall issue a certificate of compliance upon approval of a person's application. The certification shall automatically terminate 1 year after issuance if not renewed.

(a) A credentialing entity may suspend or revoke the recovery residence administrator's certificate of compliance if the recovery residence administrator fails to adhere to the continuing education requirements.

(b) If a certified recovery residence administrator of a recovery residence is arrested for or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) while acting in that capacity, the recovery residence shall immediately remove the person from that position and shall notify the credentialing entity within 3 business days after such removal. The recovery residence shall have 30 days to retain a certified recovery residence administrator. The credentialing entity shall revoke the certificate of compliance of any recovery residence that fails to meet these requirements.

(c) A credentialing entity shall revoke a recovery residence administrator's certificate of compliance if the recovery residence administrator provides false or misleading information to the credentialing entity at any time.

(7) A person may not advertise himself or herself to the public, in any way or by any medium whatsoever, as a "certified recovery residence administrator" unless he or she has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A certified recovery residence administrator may actively manage no more than three recovery residences at any given time.

Section 4. Section 397.4872, Florida Statutes, is created to read:

397.4872 Exemption from disqualification; publication.—

(1) Individual exemptions to staff disqualification or administrator ineligibility may be requested if a recovery residence deems the decision will benefit the program. Requests for exemptions must be submitted in writing to the department within 20 days after the denial by the credentialing entity and must include a justification for the exemption.

(2) The department may exempt a person from ss. 397.487(6) and 397.4871(5) if it has been at least 3 years since the person has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense. An exemption from the disqualifying offenses may not be given under any circumstances for any person who is a:

- (a) Sexual predator pursuant to s. 775.21;
- (b) Career offender pursuant to s. 775.261; or
- (c) Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

(3) By April 1, 2016, each credentialing entity shall submit a list to the department of all recovery residences and recovery residence administrators certified by the credentialing entity that hold a valid certificate of compliance. Thereafter, the credentialing entity must notify the department within 3 business days after a new recovery residence or recovery residence administrator is certified or a recovery residence or recovery residence administrator's certificate expires or is terminated. The department shall publish on its website a list of all recovery residences that hold a valid certificate of compliance. The department shall also publish on its website a list of all recovery residence administrators who hold a valid certificate of compliance. A recovery residence or recovery residence administrator shall be excluded from the list upon written request to the department by the listed individual or entity.

Section 5. Subsections (1) and (5) of section 397.407, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

397.407 Licensure process; fees.—

(1) The department shall establish by rule the licensure process to include fees and categories of licenses. The rule must prescribe a fee range that is based, at least in part, on the number and complexity of programs listed in s. ~~397.311(22)~~ ~~397.311(18)~~ which are operated by a licensee. The fees from the licensure of service components are sufficient to cover at least 50 percent of the costs of regulating the service components. The department shall specify by rule a fee range for public and privately funded licensed service providers. Fees for privately funded licensed service providers must exceed the fees for publicly funded licensed service providers. During adoption of the rule governing the licensure process and fees, the department shall carefully consider the potential adverse impact on small, not-for-profit service providers.

(5) The department may issue probationary, regular, and interim licenses. After adopting the rule governing the licensure process and fees, the department shall issue one license for each service component that is operated by a service provider and defined in rule pursuant to s. ~~397.311(22)~~ ~~397.311(18)~~. The license is valid only for the specific service components listed for each specific location identified on the license. The licensed service provider shall apply for a new license at least 60 days before the addition of any service components or 30 days before the relocation of any of its service sites. Provision of service components or delivery of services at a location not identified on the license may be considered an unlicensed operation that authorizes the department to seek an injunction against operation as

provided in s. 397.401, in addition to other sanctions authorized by s. 397.415. Probationary and regular licenses may be issued only after all required information has been submitted. A license may not be transferred. As used in this subsection, the term “transfer” includes, but is not limited to, the transfer of a majority of the ownership interest in the licensed entity or transfer of responsibilities under the license to another entity by contractual arrangement.

(11) Effective July 1, 2016, a service provider licensed under this part may not refer a current or discharged patient to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871 or the recovery residence is owned and operated by a licensed service provider or a licensed service provider’s wholly owned subsidiary. For purposes of this subsection, the term “refer” means to inform a patient by any means about the name, address, or other details of the recovery residence. However, this subsection does not require a licensed service provider to refer any patient to a recovery residence.

Section 6. Paragraph (e) of subsection (5) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, “county public general hospital” means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall

be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(41) ~~397.311(35)~~. Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d) 1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined prior to program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any

hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

Section 7. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms “detoxification services,” “addictions receiving facility,” and “receiving facility” have the same meanings as those provided in ss. ~~397.311(22)(a)4.~~ ~~397.311(18)(a)4.~~, 397.311(22)(a)1. ~~397.311(18)(a)1.~~, and 394.455(26), respectively.

Section 8. Subsection (8) of section 397.405, Florida Statutes, is amended to read:

397.405 Exemptions from licensure.—The following are exempt from the licensing provisions of this chapter:

(8) A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit religious organization or denomination providing any of the licensed service components itemized under s. ~~397.311(22)~~ ~~397.311(18)~~ is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious, spiritual, or ecclesiastical in nature.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician or physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced registered nurse practitioner licensed under part I of chapter 464, who provides substance abuse treatment, so long as the physician, physician assistant, psychologist, psychotherapist, or advanced registered nurse practitioner does not represent to the public that he or she is a licensed service provider and does not provide services to individuals pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. Section 397.416, Florida Statutes, is amended to read:

397.416 Substance abuse treatment services; qualified professional.—Notwithstanding any other provision of law, a person who was certified through a certification process recognized by the former Department of Health and Rehabilitative Services before January 1, 1995, may perform the duties of a qualified professional with respect to substance abuse treatment services as defined in this chapter, and need not meet the certification requirements contained in s. 397.311(30) ~~397.311(26)~~.

Section 10. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) “Drug rehabilitation program” means a service provider, established pursuant to s. 397.311(39) ~~397.311(33)~~, that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) “Employee assistance program” means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers pursuant to s. 397.311(39) ~~397.311(33)~~.

Section 11. This act shall take effect July 1, 2015.

Approved by the Governor June 10, 2015.

Filed in Office Secretary of State June 10, 2015.