

## CHAPTER 2022-36

### Committee Substitute for Committee Substitute for Senate Bill No. 1262

An act relating to mental health and substance abuse; amending s. 119.0712, F.S.; authorizing emergency contact information to be released to certain entities; amending s. 394.455, F.S.; defining the term “telehealth”; amending s. 394.459, F.S.; revising the conditions under which a patient’s communication with persons outside of a receiving facility may be restricted; revising the conditions under which a patient’s sealed and unopened incoming or outgoing correspondence may be restricted; revising the conditions under which a patient’s contact and visitation with persons outside of a receiving facility may be restricted; revising the frequency with which the restriction on a patient’s right to receive visitors must be reviewed; amending s. 394.4599, F.S.; requiring a receiving facility to notify specified emergency contacts of individuals who are being involuntarily held for examination; amending s. 394.4615, F.S.; requiring receiving facilities to document that an option to authorize the release of specified information has been provided, within a specified timeframe, to individuals admitted on a voluntary basis; amending s. 394.463, F.S.; requiring that reports issued by law enforcement officers when delivering a person to a receiving facility contain certain information related to emergency contacts; limiting the use of certain information provided; requiring the Department of Children and Families to receive and maintain reports relating to the transportation of patients; revising a prohibition on releasing a patient without certain documented approval; authorizing receiving facility discharge examinations to be conducted through telehealth; requiring a facility administrator to file a petition for involuntary placement by a specified time; authorizing a receiving facility to postpone the release of a patient if certain requirements are met; prohibiting certain activities relating to examination and treatment; providing a criminal penalty; amending s. 394.468, F.S.; requiring that discharge and planning procedures include and document the consideration of specified factors and actions; amending s. 394.9086; modifying meeting requirements of the Commission on Mental Health and Substance Abuse; authorizing reimbursement for per diem and travel expenses for members of the commission; authorizing the commission to access certain information or records; revising the due date for the commission’s interim report; amending s. 397.601, F.S.; requiring service providers to document that an option to authorize the release of specified information has been provided, within a specified timeframe, to individuals admitted on a voluntary basis; amending s. 397.6772, F.S.; requiring law enforcement officers to include certain information relating to emergency contacts in reports relating to the delivery of a person to a hospital or licensed detoxification or addictions receiving facility; limiting the use of certain information provided; amending ss. 409.972 and 744.2007, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) of section 119.0712, Florida Statutes, is amended to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.

(d)1. Emergency contact information contained in a motor vehicle record is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in a motor vehicle record may be released only to:

a. Law enforcement agencies for purposes of contacting those listed in the event of an emergency.

b. A receiving facility, hospital, or licensed detoxification or addictions receiving facility pursuant to s. 394.463(2)(a) or s. 397.6772(1)(a) for the sole purpose of informing a patient's emergency contacts of the patient's whereabouts.

Section 2. Present subsections (47), (48), and (49) of section 394.455, Florida Statutes, are redesignated as subsections (48), (49), and (50), respectively, and a new subsection (47) is added to that section, to read:

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

(47) "Telehealth" has the same meaning as provided in s. 456.47.

Section 3. Subsection (5) of section 394.459, Florida Statutes is amended to read:

394.459 Rights of patients.—

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

(a) Each person receiving services in a facility providing mental health services under this part has the right to communicate freely and privately with persons outside the facility unless a qualified professional determines it is determined that such communication is likely to be harmful to the person or others in a manner directly related to the person's clinical well-being, the clinical well-being of other patients, or the general safety of staff. Each facility shall make available as soon as reasonably possible to persons receiving services a telephone that allows for free local calls and access to a long-distance service. A facility is not required to pay the costs of a patient's long-distance calls. The telephone shall be readily accessible to the patient and shall be placed so that the patient may use it to communicate privately

and confidentially. The facility may establish reasonable rules for the use of this telephone, provided that the rules do not interfere with a patient's access to a telephone to report abuse pursuant to paragraph (f) (e).

(b) Each patient admitted to a facility under the provisions of this part shall be allowed to receive, send, and mail sealed, unopened correspondence; and no patient's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless a qualified professional determines that such correspondence is likely to be harmful to the patient or others in a manner directly related to the patient's clinical well-being, the clinical well-being of other patients, or the general safety of staff. If there is reason to believe that such correspondence it contains items or substances which may be harmful to the patient or others, ~~in which~~ case the administrator may direct reasonable examination of such mail and may regulate the disposition of such items or substances.

(c) Each facility must permit immediate access to any patient, subject to the patient's right to deny or withdraw consent at any time, by the patient's family members, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney, unless a qualified professional determines that such access would be detrimental to the patient in a manner directly related to the patient's clinical well-being, the clinical well-being of other patients, or the general safety of staff.

(d) If a patient's right to communicate with outside persons; receive, send, or mail sealed, unopened correspondence; or to receive visitors is restricted by the facility, written notice of such restriction and the reasons for the restriction shall be served on the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative; a qualified professional must document any restriction within 24 hours and such restriction shall be recorded on the patient's clinical record with the reasons therefor. The restriction of a patient's right to communicate or to receive visitors shall be reviewed at least every ~~3~~ 7 days. The right to communicate or receive visitors shall not be restricted as a means of punishment. Nothing in this paragraph shall be construed to limit the provisions of paragraph (e)(d).

(e)(d) Each facility shall establish reasonable rules governing visitors, visiting hours, and the use of telephones by patients in the least restrictive possible manner. Patients shall have the right to contact and to receive communication from their attorneys at any reasonable time.

(f)(e) Each patient receiving mental health treatment in any facility shall have ready access to a telephone in order to report an alleged abuse. The facility staff shall orally and in writing inform each patient of the procedure for reporting abuse and shall make every reasonable effort to present the information in a language the patient understands. A written copy of that procedure, including the telephone number of the central abuse hotline and reporting forms, shall be posted in plain view.

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

Section 4. Paragraph (b) of subsection (2) of section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(b) A receiving facility shall give prompt notice of the whereabouts of an individual who is being involuntarily held for examination to the individual's guardian, guardian advocate, health care surrogate or proxy, attorney or representative, or other emergency contact identified through electronic databases pursuant to s. 394.463(2)(a), by telephone or in person within 24 hours after the individual's arrival at the facility. Contact attempts shall be documented in the individual's clinical record and shall begin as soon as reasonably possible after the individual's arrival.

Section 5. Paragraph (a) of subsection (2) of section 394.4615, Florida Statutes, is amended to read:

394.4615 Clinical records; confidentiality.—

(2) The clinical record shall be released when:

(a) The patient or the patient's guardian authorizes the release. The guardian or guardian advocate shall be provided access to the appropriate clinical records of the patient. The patient or the patient's guardian or guardian advocate may authorize the release of information and clinical records to appropriate persons to ensure the continuity of the patient's health care or mental health care. A receiving facility must document that, within 24 hours of admission, individuals admitted on a voluntary basis have been provided with the option to authorize the release of information from their clinical record to the individual's health care surrogate or proxy, attorney, representative, or other known emergency contact.

Section 6. Paragraphs (a), (e), (f), and (g) of subsection (2) of section 394.463, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

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

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. 464.0123, a mental health counselor, a marriage and family therapist, or a clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report must include all emergency contact

information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

(e) The department shall receive and maintain the copies of ex parte orders, involuntary outpatient services orders issued pursuant to s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467, professional certificates, ~~and law enforcement officers' reports, and reports relating to the transportation of patients.~~ These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. These documents shall be used to prepare annual reports analyzing the data obtained from these documents, without information identifying patients, and shall provide copies of reports to the department, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(f) A patient shall be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility without unnecessary delay to determine if the criteria for involuntary services are met. Emergency treatment may be provided upon the order of a physician if the physician determines that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist or a clinical psychologist or, if the receiving facility is owned or operated by a hospital, ~~or~~ health system, or nationally accredited community mental health center, the release may also be approved by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis and treatment of mental illness after completion of an involuntary examination pursuant to this subsection. A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist. The release may be approved through telehealth.

(g) The examination period must be for up to 72 hours. For a minor, the examination shall be initiated within 12 hours after the patient's arrival at the facility. Within the examination period ~~or, if the examination period ends~~

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

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;
2. The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;
3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient and, if such consent is given, the patient shall be admitted as a voluntary patient; or
4. A petition for involuntary services shall be filed in the circuit court if inpatient treatment is deemed necessary or with the criminal county court, as defined in s. 394.4655(1), as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(4)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator. If a patient's 72-hour examination period ends on a weekend or holiday, and the receiving facility:

a. Intends to file a petition for involuntary services, such patient may be held at a receiving facility through the next working day thereafter and such petition for involuntary services must be filed no later than such date. If the receiving facility fails to file a petition for involuntary services at the close of the next working day, the patient shall be released from the receiving facility following approval pursuant to paragraph (f).

b. Does not intend to file a petition for involuntary services, a receiving facility may postpone release of a patient until the next working day thereafter only if a qualified professional documents that adequate discharge planning and procedures in accordance with s. 394.468, and approval pursuant to paragraph (f), are not possible until the next working day.

(5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND TREATMENT; PENALTIES.—

(a) A person may not knowingly and willfully:

1. Furnish false information for the purpose of obtaining emergency or other involuntary admission of another;

2. Cause or otherwise secure, or conspire with or assist another to cause or secure, any emergency or other involuntary procedure of another person under false pretenses; or

3. Cause, or conspire with or assist another to cause, without lawful justification, the denial to any person of any right accorded pursuant to this chapter.

(b) A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not exceeding \$5,000.

Section 7. Section 394.468, Florida Statutes, is amended to read:

394.468 Admission and discharge procedures.—

(1) Admission and discharge procedures and treatment policies of the department are governed solely by this part. Such procedures and policies shall not be subject to control by court procedure rules. The matters within the purview of this part are deemed to be substantive, not procedural.

(2) Discharge planning and procedures for any patient's release from a receiving facility or treatment facility must include and document consideration of, at a minimum:

(a) Follow-up behavioral health appointments;

(b) Information on how to obtain prescribed medications; and

(c) Information pertaining to:

1. Available living arrangements;

2. Transportation; and

3. Recovery support opportunities.

Section 8. Paragraph (c) of subsection (3) and subsection (5) of section 394.9086, Florida Statutes, are amended, and paragraphs (d) and (e) are added to subsection (3) of that section, to read:

394.9086 Commission on Mental Health and Substance Abuse.—

(3) MEMBERSHIP; TERM LIMITS; MEETINGS.—

(c) The commission shall convene no later than September 1, 2021. The commission shall meet quarterly or upon the call of the chair. The commission may shall hold its meetings in person at locations throughout the state or via teleconference or other electronic means.

(d) Members of the commission are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.



(e) Notwithstanding any other law, the commission may request and shall be provided with access to any information or records, including exempt and confidential information or records, which are necessary for the commission to carry out its duties. Information or records obtained by the commission which are otherwise exempt or confidential and exempt shall retain such exempt or confidential and exempt status, and the commission may not disclose such information or records.

(5) REPORTS.—By ~~January 1, 2023~~ September 1, 2022, the commission shall submit an interim report to the President of the Senate, the Speaker of the House of Representatives, and the Governor containing its findings and recommendations on how to best provide and facilitate mental health and substance abuse services in the state. The commission shall submit its final report to the President of the Senate, the Speaker of the House of Representatives, and the Governor by September 1, 2023.

Section 9. Subsection (5) is added to section 397.601, Florida Statutes, to read:

397.601 Voluntary admissions.—

(5) A service provider must document that, within 24 hours of admission, individuals admitted on a voluntary basis have been provided with the option to authorize the release of information from their clinical record to the individual's health care surrogate or proxy, attorney, representative, or other known emergency contact.

Section 10. Section 397.6772, Florida Statutes, is amended to read:

397.6772 Protective custody without consent.—

(1) If a person in circumstances which justify protective custody as described in s. 397.677 fails or refuses to consent to assistance and a law enforcement officer has determined that a hospital or a licensed detoxification or addictions receiving facility is the most appropriate place for the person, the officer may, after giving due consideration to the expressed wishes of the person:

(a) Take the person to a hospital or to a licensed detoxification or addictions receiving facility against the person's will but without using unreasonable force. The officer shall use the standard form developed by the department pursuant to s. 397.321 to execute a written report detailing the circumstances under which the person was taken into custody. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a hospital or licensed detoxification or addictions receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant

to s. 119.0712(2)(d). The written report shall be included in the patient's clinical record; or

(b) In the case of an adult, detain the person for his or her own protection in any municipal or county jail or other appropriate detention facility.

Such detention is not to be considered an arrest for any purpose, and no entry or other record may be made to indicate that the person has been detained or charged with any crime. The officer in charge of the detention facility must notify the nearest appropriate licensed service provider within the first 8 hours after detention that the person has been detained. It is the duty of the detention facility to arrange, as necessary, for transportation of the person to an appropriate licensed service provider with an available bed. Persons taken into protective custody must be assessed by the attending physician within the 72-hour period and without unnecessary delay, to determine the need for further services.

(2) ~~The law enforcement officer must notify the nearest relative of a minor in protective custody and must be notified by the law enforcement officer, as must notify the nearest relative or other known emergency contact of an adult, unless the adult requests that there be no notification. The law enforcement officer must document such notification, and any attempts at notification, in the written report detailing the circumstances under which the person was taken into custody as required under paragraph (1)(a).~~

Section 11. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a treatment facility as defined in ~~s. 394.455(49)~~ ~~s. 394.455(48)~~.

Section 12. Subsection (7) of section 744.2007, Florida Statutes, is amended to read:

744.2007 Powers and duties.—

(7) A public guardian may not commit a ward to a treatment facility, as defined in ~~s. 394.455(49)~~ ~~s. 394.455(48)~~, without an involuntary placement proceeding as provided by law.

Section 13. This act shall take effect July 1, 2022.

Approved by the Governor April 6, 2022.

Filed in Office Secretary of State April 6, 2022.