

CHAPTER 2022-55

Committee Substitute for Committee Substitute for House Bill No. 893

An act relating to child welfare placements; amending s. 39.407, F.S.; authorizing the Department of Children and Families, under certain circumstances, to place children in its custody in therapeutic group homes for residential mental health treatment without prior court approval; revising definitions; defining the term “therapeutic group home”; providing that the department, rather than the Agency for Health Care Administration, shall appoint qualified evaluators to conduct suitability assessments of certain children in the department’s custody; specifying qualifications for evaluators conducting suitability assessments for certain placements; revising requirements for suitability assessments; specifying when the department must provide a copy of the assessment to the guardian ad litem and the court; removing the department’s and the agency’s rulemaking authority; reordering and amending s. 409.166, F.S.; revising the definition of the term “special needs child”; amending ss. 63.207, 258.0142, 409.1664, and 414.045, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (6) of section 39.407, Florida Statutes, is amended to read:

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

(6) Children ~~who~~ are in the legal custody of the department may be placed by the department, without prior approval of the court, 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:

~~2.1.~~ “Residential treatment” or “residential treatment program” means a 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.

~~1.2.~~ “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 or behavioral health treatment.
- c. An appropriate, less restrictive alternative to residential treatment is unavailable.

4. “Therapeutic group home” means a residential treatment center that offers a 24-hour residential program providing community-based mental health treatment and mental health support services to children who meet the criteria in s. 394.492(5) or (6) in a nonsecure, homelike setting.

(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 department Agency for Health Care Administration.~~ This suitability assessment must be completed before the placement of the child in a residential treatment program center for emotionally disturbed children and adolescents ~~or a hospital.~~

1. The qualified evaluator for placement in a residential treatment center, other than a therapeutic group home, or a hospital must be a psychiatrist or a psychologist licensed in this state 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.

2. The qualified evaluator for placement in a therapeutic group home must be a psychiatrist licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a mental health counselor licensed under chapter 491 who has at least 2 years of experience in the diagnosis and treatment of serious emotional or behavioral disturbance in children and adolescents and who has no actual or perceived conflict of interest with any residential treatment center or program.

(c) ~~Consistent with the requirements of this section 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 an 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 treatment in a residential treatment program 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, to the guardian ad litem, and, if the child is a member of a Medicaid managed care plan, to the plan that is financially responsible for the child's care in residential treatment, all of whom must be provided with 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. Within 5 days after the department's receipt of the assessment, the department shall ~~and must~~ provide the guardian ad litem and the court with a copy of the assessment by the qualified evaluator.

(e) 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 toward 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 toward 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 60 days after the child's admission to the residential treatment program. An independent review of the child's progress toward achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court before its 60-day 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 60-day 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 60-day independent review by the qualified evaluators of the child's progress toward 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.~~

Section 2. Subsection (1) of section 63.207, Florida Statutes, is amended to read:

63.207 Out-of-state placement.—

(1) Unless the parent placing a minor for adoption files an affidavit that the parent chooses to place the minor outside the state, giving the reason for that placement, or the minor is to be placed with a relative or with a stepparent, or the minor is a difficult to place special-needs child, as defined in s. 409.166(2) ~~s. 409.166~~, or for other good cause shown, an adoption entity may not:

(a) Take or send a minor out of the state for the purpose of placement for adoption; or

(b) Place or attempt to place a minor for the purpose of adoption with a family who primarily lives and works outside Florida in another state. If an adoption entity is acting under this subsection, the adoption entity must file a petition for declaratory statement pursuant to s. 63.102 for prior approval of fees and costs. The court shall review the costs pursuant to s. 63.097. The petition for declaratory statement must be converted to a petition for an adoption upon placement of the minor in the home. When a minor is placed for adoption with prospective adoptive parents who primarily live and work outside this state, the circuit court in this state may retain jurisdiction over the matter until the adoption becomes final. The prospective adoptive parents may finalize the adoption in this state.

Section 3. Paragraph (b) of subsection (1) and subsection (3) of section 258.0142, Florida Statutes, are amended to read:

258.0142 Foster and adoptive family state park fee discounts.—

(1) To promote awareness of the contributions made by foster families and adoptive families to the vitality of the state, the Division of Recreation and Parks shall provide the following discounts on state park fees to persons who present written documentation satisfactory to the division which evidences their eligibility for the discounts:

(b) Families who adopt a difficult to place ~~special-needs~~ child as described in s. 409.166(2)(d)2. ~~s. 409.166(2)(a)2.~~ from the Department of Children and Families shall receive a one-time family annual entrance pass at no charge at the time of the adoption.

(3) The division shall continue its partnership with the Department of Children and Families to promote fostering and adoption of difficult to place ~~special-needs~~ children with events held each year during National Foster Care Month and National Adoption Month.

Section 4. Subsection (2) of section 409.166, Florida Statutes, is reordered and amended to read:

409.166 Children within the child welfare system; adoption assistance program.—

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

~~(a)(b)~~ “Adoption assistance” means financial assistance and services provided to a child and his or her adoptive family. Such assistance may include a maintenance subsidy, medical assistance, Medicaid assistance, and reimbursement of nonrecurring expenses associated with the legal adoption. The term also includes a tuition exemption at a postsecondary career program, community college, or state university.

(b)(e) “Child within the child welfare system” or “child” means a difficult to place ~~special-needs~~ child and any other child who was removed from the child’s caregiver due to abuse or neglect and whose permanent custody has been awarded to the department or to a licensed child-placing agency.

(c)(d) “Department” means the Department of Children and Families.

(d)(a) “Difficult to place ~~Special-needs~~ child” means:

1. A child whose permanent custody has been awarded to the department or to a licensed child-placing agency;

2. A child who has established significant emotional ties with his or her foster parents or is not likely to be adopted because he or she is:

- a. Eight years of age or older;
- b. Developmentally disabled;
- c. Physically or emotionally handicapped;

d. A member of a racial group that is disproportionately represented among children described in subparagraph 1. ~~Of black or racially mixed parentage;~~ or

e. A member of a sibling group of any age, provided two or more members of a sibling group remain together for purposes of adoption; and

3. Except when the child is being adopted by the child’s foster parents or relative caregivers, a child for whom a reasonable but unsuccessful effort has been made to place the child without providing a maintenance subsidy.

(e) “Licensed child-placing agency” has the same meaning as in s. 39.01.

(f) “Maintenance subsidy” means a monthly payment as provided in subsection (4).

Section 5. Paragraph (a) of subsection (1) and subsection (2) of section 409.1664, Florida Statutes, are amended to read:

409.1664 Adoption benefits for qualifying adoptive employees of state agencies, veterans, and servicemembers.—

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

(a) “Child within the child welfare system” has the same meaning as provided in s. 409.166(2) ~~s. 409.166~~.

(2) A qualifying adoptive employee, veteran, or servicemember who adopts a child within the child welfare system who is difficult to place ~~as has special-needs~~ described in s. 409.166(2)(d)2. ~~s. 409.166(2)(a)2.~~ is eligible to receive a lump-sum monetary benefit in the amount of \$10,000 per such

child, subject to applicable taxes. A qualifying adoptive employee, veteran, or servicemember who adopts a child within the child welfare system who is not difficult to place as does not have special needs described in s. 409.166(2)(d)2. ~~s. 409.166(2)(a)2.~~ is eligible to receive a lump-sum monetary benefit in the amount of \$5,000 per such child, subject to applicable taxes. A qualifying adoptive employee of a charter school or the Florida Virtual School may retroactively apply for the monetary benefit provided in this subsection if such employee was employed by a charter school or the Florida Virtual School when he or she adopted a child within the child welfare system pursuant to chapter 63 on or after July 1, 2015. A veteran or servicemember may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2020.

(a) Benefits paid to a qualifying adoptive employee who is a part-time employee must be prorated based on the qualifying adoptive employee's full-time equivalency at the time of applying for the benefits.

(b) Monetary benefits awarded under this subsection are limited to one award per adopted child within the child welfare system.

(c) The payment of a lump-sum monetary benefit for adopting a child within the child welfare system under this section is subject to a specific appropriation to the department for such purpose.

Section 6. Paragraph (b) of subsection (1) of section 414.045, Florida Statutes, is amended to read:

414.045 Cash assistance program.—Cash assistance families include any families receiving cash assistance payments from the state program for temporary assistance for needy families as defined in federal law, whether such funds are from federal funds, state funds, or commingled federal and state funds. Cash assistance families may also include families receiving cash assistance through a program defined as a separate state program.

(1) For reporting purposes, families receiving cash assistance shall be grouped into the following categories. The department may develop additional groupings in order to comply with federal reporting requirements, to comply with the data-reporting needs of the state board as defined in s. 445.002, or to better inform the public of program progress.

(b) Child-only cases.—Child-only cases include cases that do not have an adult or teen head of household as defined in federal law. Such cases include:

1. Children in the care of caretaker relatives, if the caretaker relatives choose to have their needs excluded in the calculation of the amount of cash assistance.

2. Families in the Relative Caregiver Program as provided in s. 39.5085.

3. Families in which the only parent in a single-parent family or both parents in a two-parent family receive supplemental security income (SSI) benefits under Title XVI of the Social Security Act, as amended. To the extent permitted by federal law, individuals receiving SSI shall be excluded as household members in determining the amount of cash assistance, and such cases shall not be considered families containing an adult. Parents or caretaker relatives who are excluded from the cash assistance group due to receipt of SSI may choose to participate in work activities. An individual whose ability to participate in work activities is limited who volunteers to participate in work activities shall be assigned to work activities consistent with such limitations. An individual who volunteers to participate in a work activity may receive child care or support services consistent with such participation.

4. Families in which the only parent in a single-parent family or both parents in a two-parent family are not eligible for cash assistance due to immigration status or other limitation of federal law. To the extent required by federal law, such cases shall not be considered families containing an adult.

5. To the extent permitted by federal law and subject to appropriations, difficult to place special-needs children who have been adopted pursuant to s. 409.166 and whose adopting family qualifies as a needy family under the state program for temporary assistance for needy families. Notwithstanding any provision to the contrary in s. 414.075, s. 414.085, or s. 414.095, a family shall be considered a needy family if:

a. The family is determined by the department to have an income below 200 percent of the federal poverty level;

b. The family meets the requirements of s. 414.095(2) and (3) related to residence, citizenship, or eligible noncitizen status; and

c. The family provides any information that may be necessary to meet federal reporting requirements specified under Part A of Title IV of the Social Security Act.

6. Families in the Guardianship Assistance Program as provided in s. 39.6225.

Families described in subparagraph 1., subparagraph 2., or subparagraph 3. may receive child care assistance or other supports or services so that the children may continue to be cared for in their own homes or in the homes of relatives. Such assistance or services may be funded from the temporary assistance for needy families block grant to the extent permitted under federal law and to the extent funds have been provided in the General Appropriations Act.

Section 7. This act shall take effect upon becoming a law.

Approved by the Governor April 6, 2022.

Filed in Office Secretary of State April 6, 2022.