

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 476

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Florida Mental Health Act

DATE: March 24, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper	Stovall	HP	Fav/CS
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 476 increases the qualifications for a psychiatric nurse acting pursuant to the Baker Act. The bill requires a psychiatric nurse to be an advanced registered nurse practitioner certified under s. 464.012, F.S., and to hold a national advanced practice certification as a psychiatric-mental health advanced practice nurse.

The bill authorizes expanded practice for a psychiatric nurse performing within the framework of a protocol with a psychiatrist. Such psychiatric nurse may examine at a receiving facility a patient for whom involuntary examination has been initiated.

The bill authorizes psychiatric nurses to release Baker Act patients from involuntary examination in a receiving facility only if the receiving facility is owned or operated by a hospital or health system and the psychiatric nurse is performing within the framework of an established protocol with a psychiatrist. A psychiatric nurse may only release a patient whose involuntary examination was initiated by a psychiatrist upon approval of that psychiatrist.

These modifications to the Baker Act are expected to ease staffing constraints at receiving facilities so that patients who are appropriate for release are timely released, thereby expanding capacity for others needing involuntary examination.

The bill provides and effective date of July 1, 2015.

II. Present Situation:

The Florida Mental Health Act

In 1971, the Florida Legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address mental health needs in the state.¹ Part I of ch. 394, F.S., provides authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment.

Current law provides that an involuntary examination may be initiated for a person if there is reason to believe the person has a mental illness and because of the illness:²

- The person has refused a voluntary examination after explanation of the purpose of the exam, or is unable to determine for themselves that an examination is needed; and
- The person is likely to suffer from self-neglect, cause substantial harm to himself or herself, or be a danger to himself or herself or others.

An involuntary examination may be initiated by a circuit court or a law enforcement officer.³ A circuit court may enter an ex parte order stating a person meets the criteria for involuntary examination. A law enforcement officer, as defined in s. 943.10, F.S., may take a person into custody who appears to meet the criteria for involuntary examination and transport that person to a receiving facility for examination. In addition, the following professionals, when they have examined a person within the preceding 48 hours, may issue a certificate stating that the person meets the criteria for involuntary examination:⁴

- A physician licensed under ch. 458, F.S., or ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master’s degree or a doctorate in psychiatric nursing and 2 years of post-master’s clinical experience under the supervision of a physician.
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.
- A clinical social worker licensed under ch. 491, F.S.

The Department of Children and Families (DCF) administers the Baker Act through receiving facilities which provide for the examination of persons with evidence of a mental illness.

¹ Section 1, ch. 71-131, L.O.F.

² Section 394.463(1), F.S.

³ Section 394.463(2)(a), F.S.

⁴ *Id.* and s. 394.455, F.S.

Receiving facilities are designated by DCF and may be public or private facilities which provide the examination and short-term treatment of persons who meet criteria under the Baker Act.⁵

A patient taken to a receiving facility must be examined by a physician or clinical psychologist. Upon the order of a physician, the patient may be given emergency treatment if it is determined that such treatment is necessary.⁶ Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state hospitals (e.g., Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.⁷

To be released by the receiving facility, the patient must have documented approval from a psychiatrist, clinical psychologist, or, if the receiving facility is a hospital, by an attending emergency department physician.⁸ The statute does not allow the release of a patient by a psychiatric nurse. However, receiving facilities are prohibited from holding a patient for involuntary examination for longer than 72 hours.⁹

Psychiatric Nurses

In Florida, a psychiatric nurse is a registered nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.¹⁰ Currently, there are 590 psychiatric nurses in Florida.¹¹

Psychiatric–Mental Health Nurse Practitioner Certification

In Florida, psychiatric nurses are not required to hold a national advanced practice certification. However, if a nurse chooses to become certified as a Psychiatric–Mental Health Nurse Practitioner, he or she must meet certain eligibility requirements as determined by the American Nurses Credentialing Center (ANCC). To be eligible for national certification an individual must:¹²

- Hold a current, active RN license;
- Hold a master's, postgraduate, or doctoral degree from an accredited family psychiatric-mental health nurse practitioner program;
- Have a minimum of 500 faculty-supervised clinical hours in the nursing program;
- Complete specified graduate-level courses; and
- Complete clinical training in at least two psychotherapeutic treatment modalities.

⁵ Section 394.455(26), F.S.

⁶ Section 394.463(2)(f), F.S.

⁷ Section 394.455(32), F.S.

⁸ Section 394.463(2)(f), F.S.

⁹ *Id.*

¹⁰ Section 394.455(23), F.S.

¹¹ Florida House of Representatives, Health & Human Services Committee, *CS/CS/HB 335 Staff Analysis*, (Mar. 16, 2015), available at <http://www.flsenate.gov/Session/Bill/2015/0335/?Tab=Analyses> (last visited Mar. 18, 2015).

¹² American Nurses Credentialing Center; Psychiatric-Mental Health Nurse Practitioner Certification Eligibility Criteria, (2014), available at <http://www.nursecredentialing.org/FamilyPsychNP-Eligibility.aspx> (last visited Mar. 18, 2015).

Eligible candidates may take a national certification examination developed by the ANCC. If certified, the individual must provide 1,000 clinical hours of patient care and log 75 hours of continuing education every 5 years. Certified psychiatric nurses must be recertified every 5 years.¹³

Advanced Registered Nurse Practitioners

Part I of ch. 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (board). Licensure requirements to practice advanced and specialized nursing include completion of education requirements,¹⁴ demonstration of passage of a DOH approved examination, a clean criminal background screening, and payment of applicable fees. Renewal is biennial and contingent upon completion of certain continuing medical education requirements. For an applicant to be eligible to be certified as an ARNP, the applicant must:¹⁵

- Hold a current, active registered nurse (RN) license;
- Hold a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills; and
- Submit proof to the board that the applicant holds a current national advanced practice certification from a board-approved nursing specialty board.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.¹⁶ All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or a dentist.¹⁷

ARNPs may carry out treatments as specified in statute, including:¹⁸

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Performing additional functions as may be determined by rule in accordance with s. 464.003(2), F.S.; and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above allowed acts, ARNPs may also perform other acts as authorized by statute and within his or her specialty.¹⁹ Further, if it is within the ARNPs established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.²⁰

¹³ American Nurses Credentialing Center, *FAQs about Advanced Practice Psychiatric Nurses*, (2009) available at <http://www.apna.org/i4a/pages/index.cfm?pageid=3866> (last visited Mar. 18, 2015).

¹⁴ Rule 64B9-4.003, F.A.C., provides that an Advanced Nursing Program shall be at least 1 year long and shall include theory in the biological, behavioral, nursing and medical sciences relevant to the area of advanced practice in addition to clinical expertise with a qualified preceptor.

¹⁵ Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C.

¹⁶ Section 464.012(2), F.S.

¹⁷ Section 464.012(3), F.S.

¹⁸ *Id.*

¹⁹ Section 464.012(4), F.S.

²⁰ Section 464.012(4)(c)5, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 394.455, F.S., by redefining “psychiatric nurse” to mean:

An advanced registered nurse practitioner certified under s. 464.012, F.S., who has a master’s degree or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric-mental health advanced practice nurse, and has 2 years of post-master’s clinical experience under the supervision of a physician.

A psychiatric nurse is currently authorized in part I of ch. 394, F.S., to perform:

- Assessment of a mental health resident and determination of appropriateness for the mental health resident to reside in an assisted living facility that holds a limited mental health license.²¹
- Initiation of an involuntary examination by executing 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.²²
- Providing a second opinion in support of a recommendation for involuntary outpatient placement of a patient if the receiving facility is in a county having a population of fewer than 50,000 and a facility administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion.²³
- Deeming services in an involuntary outpatient treatment plan to be clinically appropriate.²⁴
- Providing a second opinion in support of a recommendation for involuntary inpatient placement of a patient if the receiving facility is in a county having a population of fewer than 50,000 and a facility administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion.²⁵

These functions will now be performed by an ARNP who holds a national advanced practice certification as a psychiatric-mental health advanced practice nurse.

Section 2 amends s. 394.463, F.S., to authorize psychiatric nurses to examine patients at a receiving facility and to approve the release of patients from a receiving facility within the framework of a protocol with a psychiatrist. This provision adds psychiatric nurses to the limited group of health care providers who may release a patient from a receiving facility.

A psychiatric nurse may approve the release of a patient from a receiving facility only if the receiving facility is owned or operated by a hospital or health system and the psychiatric nurse is performing within the framework of an established protocol with a psychiatrist. A psychiatric nurse may not approve the release of a patient when the involuntary examination has been initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.

²¹ Section 394.4574, F.S.

²² Section 394.463, F.S.

²³ Section 394.4655(2)(a)1, F.S.

²⁴ Section 394.4655(2)(a)3, F.S.

²⁵ Section 394.467(2), F.S.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Current psychiatric nurses who are not ARNPs and/or not certified as psychiatric-mental health advanced practice nurses will incur costs in order to attain the required certification(s).

C. Government Sector Impact:

None reported by the Department of Children and Families.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455 and 394.463.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 23, 2015:

The CS reinstates the term “psychiatric nurse” and revises the definition of “psychiatric nurse.” The CS authorizes a psychiatric nurse performing within the framework of an established protocol with a psychiatrist to examine a patient in a receiving facility and approve release of a patient from a receiving facility if the receiving facility is owned and operated by a hospital or a health system. The CS provides that a psychiatric nurse may not approve the release of a patient when the involuntary examination has been initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.

- B. **Amendments:**

None.