

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 335 Psychiatric Nurses

**SPONSOR(S):** Health & Human Services Committee; Health Quality Subcommittee; Plasencia

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 1 N, As CS	Guzzo	O'Callaghan
2) Health & Human Services Committee	18 Y, 0 N, As CS	Guzzo	Calamas

### SUMMARY ANALYSIS

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs of individuals in the state.

The Baker Act authorizes involuntary examination of an individual who appears to have a mental illness and who, because of mental illness, presents a substantial threat of harm to themselves or others. Involuntary examination may be initiated by courts, law enforcement officers, physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists, and clinical social workers. The individual is taken to a receiving facility and is examined by a physician or clinical psychologist. Upon the order of a physician, the individual may be given emergency treatment if it is determined that such treatment is necessary. To be released from the facility, the patient must have documented approval from a psychiatrist or clinical psychologist. If the receiving facility is a hospital, the release may be approved by an attending emergency department physician. Receiving facilities are prohibited from holding a patient for involuntary examination for longer than 72 hours.

A psychiatric nurse is a registered nurse licensed under 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.

The bill increases psychiatric nurse licensure requirements by requiring them to be certified as an advanced registered nurse practitioner instead of only being licensed as a registered nurse. The bill also requires a psychiatric nurse to hold a national advanced practice certification as a psychiatric mental health advanced practice nurse, and perform within the framework of an established protocol with a psychiatrist. The bill retains requirements for a psychiatric nurse to hold a master's or doctoral degree in psychiatric nursing, and complete 2 years of post-master's clinical experience under a physician's supervision.

The bill authorizes a psychiatric nurse to:

- Examine a patient upon admission to a receiving facility; and
- Approve a patient to be discharged from a receiving facility if the facility is owned or operated by a hospital or health system.

The bill prohibits a psychiatric nurse from approving a patient to be discharged if an involuntary examination of the patient was initiated by a psychiatrist, unless the discharge is approved by that psychiatrist.

The bill does not appear to have a fiscal impact on state or local government.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Involuntary Examination Under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address mental health needs in the state.<sup>1</sup> 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:<sup>2</sup>

- 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 themselves, or be a danger to themselves or others.

An involuntary examination may be initiated by a circuit court or a law enforcement officer.<sup>3</sup> 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 them 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:<sup>4</sup>

- A physician licensed under ch. 458, F.S., or an osteopathic physician licensed under 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. 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.<sup>5</sup> Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment

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<sup>1</sup> Section 1, ch. 71-131, L.O.F.

<sup>2</sup> Section 394.463(1), F.S.

<sup>3</sup> Section 394.463(2)(a), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 394.455(26), F.S.

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.<sup>6</sup>

An individual taken to a receiving facility must be examined by a physician or clinical psychologist. Upon the order of a physician, the individual may be given emergency treatment if it is determined that such treatment is necessary. To be released from the facility, the patient must have documented approval from a psychiatrist or clinical psychologist. If the receiving facility is a hospital, the release may be approved by an attending emergency department physician. Receiving facilities are prohibited from holding a patient for involuntary examination for longer than 72 hours.

### Advanced Registered Nurse Practitioners (ARNPs)

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,<sup>7</sup> demonstration of passage of a DOH approved examination, a clean criminal background screening, and payment of applicable fees.<sup>8</sup> Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

For an applicant to be eligible to be certified as an ANRP, the applicant must:<sup>9</sup>

- 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<sup>10</sup> nursing specialty board.

#### *Specialty Certification – Psychiatric Mental Health*

The America Nurses Credentialing Center (ANCC) is recognized by the Board as an approved nursing specialty board.<sup>11</sup> A registered nurse who wishes to be certified as an ANRP to practice as a specialist in psychiatric mental health nursing may apply to the ANCC for certification. To be eligible for certification by the ANCC an individual must:

- Hold a current, active RN license;
- Hold a master's, postgraduate, or doctoral degree from an accredited family psychiatric-mental health nurse practitioner program;
- Complete specified graduate-level courses,<sup>12</sup> and

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<sup>6</sup> Section 394.455(32), F.S.

<sup>7</sup> Rule 64B9-4.003, F.A.C., provides that an Advanced Nursing Program shall be at least one 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.

<sup>8</sup> Section 464.009, F.S., provides an alternative to licensure by examination for nurses through licensure by endorsement.

<sup>9</sup> Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C.

<sup>10</sup> Rule 64B9-4.002(3), F.A.C., provides the national nursing specialty boards recognized by the Board include, but are not limited to: Council on Certification of Nurse Anesthetists or Council on Recertification of Nurse Anesthetists, or their predecessors; American College of Nurse Midwives; American Nurses Association (American Nurses Credentialing Center) Nurse Practitioner level examinations only; National Certification Corporation for OB/GYN, Neonatal Nursing Specialties (nurse practitioner level examination only); National Board of Pediatric Nurse Practitioners and Associates (Pediatric Nurse Associate/Practitioner level examinations only); National Board for Certification of Hospice and Palliative Nurses; American Academy of Nurse Practitioners (nurse practitioner level examination only); Oncology Nursing Certification Corporation; American Association of Critical-Care Nurses (AACN Certification Corporation); and the Adult Acute Care Nurse Practitioner Certification (ACNPC).

<sup>11</sup> Rule 64B9-4.002(3)(c), F.A.C.

<sup>12</sup> The individual must have completed three separate, comprehensive graduate-level courses in: Advanced physiology/pathophysiology, including general principles that apply across the life span; Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts, and approaches; and Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics, and pharmacotherapeutics of all broad categories of agents; with content in Health promotion or maintenance; Differential diagnosis and disease management, including the use and prescription of pharmacologic and nonpharmacologic interventions; and clinical training in at least two psychotherapeutic treatment modalities.

- Have a minimum of 500 faculty-supervised clinical hours.<sup>13</sup>

Eligible candidates may take a national certification examination developed by the American Nurses Credentialing Center. If certified, the individual must provide 1,000 clinical hours of patient care and log 75 hours of continuing education every five years. Certified psychiatric nurses must be recertified every five years.<sup>14</sup>

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.<sup>15</sup> 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.<sup>16</sup> ARNPs may carry out treatments as specified in statute, including:<sup>17</sup>

- 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.<sup>18</sup> Further, if it is within the ARNPs established protocol, the ARNP may identify behavioral problems, make diagnosis, and recommend treatment.<sup>19</sup>

### Psychiatric Nurses

Florida law does not require a psychiatric nurse to be certified as an ARNP by a specialty board. To be licensed as a psychiatric nurse an individual must be licensed as a RN, hold a master's or doctoral degree in psychiatric nursing, and have 2 years of post-master's clinical experience under the supervision of a physician.<sup>20</sup> Currently, there are 590 psychiatric nurses in Florida.<sup>21</sup>

### **Effect of Proposed Changes**

The bill amends s. 394.463, F.S., relating to involuntary examination under the Baker Act and the professionals authorized to examine and discharge patients at receiving facilities. The bill authorizes a psychiatric nurse to:

- Examine a patient upon admission to a receiving facility; and
- Approve a patient to be discharged from a receiving facility if the facility is owned or operated by a hospital or health system.

The bill prohibits a psychiatric nurse from approving a patient to be discharged if an involuntary examination of the patient was initiated by a psychiatrist, unless the discharge is approved by that psychiatrist.

The bill increases psychiatric nurse licensure requirements by requiring them to be certified as an ARNP instead of only being licensed as a RN. As a result, a psychiatric nurse will be required to be certified by a Board approved national specialty board. The bill specifies that the certification must be

<sup>13</sup> American Nurses Credentialing Center; *Psychiatric-Mental Health Nurse Practitioner Certification Eligibility Criteria*, available at <http://www.nursecredentialing.org/FamilyPsychNP-Eligibility.aspx> (last visited February 6, 2015).

<sup>14</sup> American Nurses Credentialing Center: *FAQs about Advanced Practice Psychiatric Nurses*, available at <http://www.apna.org/i4a/pages/index.cfm?pageid=3866> (last visited February 6, 2015).

<sup>15</sup> Section 464.012(2), F.S.

<sup>16</sup> Section 464.012(3), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 464.012(4), F.S.

<sup>19</sup> Section 464.012(4)(c)5, F.S.

<sup>20</sup> Section 394.455(23), F.S.

<sup>21</sup> Email correspondence from DOH, February 10, 2015, on file with the Health Quality Subcommittee staff.

as a psychiatric mental health advanced practice nurse. The bill also requires psychiatric nurses to perform within the framework of an established protocol with a psychiatrist.

The bill retains requirements for a psychiatric nurse to:

- Hold a master's or doctoral degree in psychiatric nursing; and
- Complete 2 years of post-master's clinical experience under a physician's supervision.

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

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 394.455, F.S., relating to the definition of "psychiatric nurse".

**Section 2:** Amends s. 394.463, F.S., relating to involuntary examination.

**Section 3:** Provides an effective date of July 1, 2015.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Psychiatric nurses may realize an increase in costs associated with the requirement to be licensed as an ARNP and the requirement to receive national certification as a psychiatric mental health advanced practice nurse. The total increase in costs is indeterminate because the number of psychiatric nurses who are not currently licensed as an ARNP is unknown. Current psychiatric nurses holding RN licenses may not be able to retain their current employment unless they acquire ARNP certification. According to the Board of Nursing, it is unknown how many psychiatric nurses only hold a RN license.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

No additional rule-making is necessary to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 11, 2015, the Health Quality Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changed the title of the bill from “an act relating to health care practitioners” to “an act relating to psychiatric nurses”. The analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

On March 12, 2015, the Health and Human Services Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the definition of “psychiatric nurse” to mean an advanced registered nurse practitioner, instead of a registered nurse, who has completed certain training and education, holds a certain certification, and performs under a psychiatrist’s protocol;
- Allowed a psychiatric nurse to release a patient from a receiving facility if the facility is owned or operated by a hospital or health system; and
- Prohibited a psychiatric nurse from approving a patient’s release if the involuntary examination has been initiated by a psychiatrist, unless that psychiatrist approves the release.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.