

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/CS/HB 335	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Health & Human Services Committee; Health Quality Subcommittee; Plasencia; Campbell and others	116 Y's	2 N's
<b>COMPANION BILLS:</b>	CS/SB 476	<b>GOVERNOR'S ACTION:</b>	Pending

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### SUMMARY ANALYSIS

CS/CS/HB 335 passed the House on April 22, 2015, and subsequently passed the Senate on April 24, 2015.

The Florida Mental Health Act (also known as "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. 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 redefines "psychiatric nurse" as a certified advanced registered nurse practitioner, instead of a registered nurse, who holds a national advanced practice certification as a psychiatric mental health advanced practice nurse. The bill retains requirements for a psychiatric nurse to hold a master's or doctoral degree in psychiatric nursing, and complete two years of post-master's clinical experience under a physician's supervision.

The bill authorizes a psychiatric nurse, who performs within the framework of an established protocol with a psychiatrist, 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.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2015.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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 the Bill**

The bill redefines "psychiatric nurse" as a certified advanced registered nurse practitioner, instead of a registered nurse, who holds a national advanced practice certification as a psychiatric mental health advanced practice nurse. The bill retains requirements for a psychiatric nurse to hold a master's or doctoral degree in psychiatric nursing, and complete two years of post-master's clinical experience under a physician's supervision.

The bill authorizes a psychiatric nurse, who performs within the framework of an established protocol with a psychiatrist, to:

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<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.

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.

## 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 certified as an ARNP by the Board of Nursing, and the requirement to receive national certification as a psychiatric mental health advanced practice nurse. An applicant for state-certification as an ARNP must submit an application fee of \$100 to the Board of Nursing.<sup>22</sup> An ARNP must pass a certification examination to receive national certification as a psychiatric mental health advanced practice nurse. The cost of the examination is \$395.<sup>23</sup>

The total increase in costs is indeterminate because, according to the Board of Nursing, the number of psychiatric nurses who are not currently licensed as ARNPs is unknown. Current psychiatric nurses holding RN licenses may not be able to retain their current employment unless they acquire ARNP certification.

### D. FISCAL COMMENTS:

None.

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<sup>22</sup> Section 464.012(5), F.S.; see also Florida Board of Nursing, Advanced Registered Nurse Practitioner Application Fees, available at <http://floridasnursing.gov/licensing/advanced-registered-nurse-practitioner/> (last visited May 4, 2015).

<sup>23</sup> American Nurses Credentialing Center, Psychiatric Mental Health Nurse Practitioner, Initial Certification Application, Examination fee, available at <http://www.nursecredentialing.org/FamilyPsychMentalHealthNP> (last visited May 4, 2015).