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1 A bill to be entitled  
 2 An act relating to mental health; creating s. 394.9086,  
 3 F.S.; creating the Community Mental Health and Substance  
 4 Abuse Treatment and Crime Reduction Act; providing  
 5 legislative findings and intent; providing goals for the  
 6 community mental health and substance abuse forensic  
 7 treatment system; defining terms; requiring the Department  
 8 of Children and Family Services, in consultation with the  
 9 Agency for Health Care Administration, to develop and  
 10 implement a community mental health and substance abuse  
 11 forensic treatment system; providing initiatives and  
 12 strategies for the community forensic system; detailing  
 13 the services required in the community forensic system;  
 14 setting forth the eligibility criteria for treatment in  
 15 the system; requiring the department to develop a  
 16 continuum of services to implement the Community Mental  
 17 Health and Substance Abuse Treatment and Crime Reduction  
 18 Act; specifying the services and functions the department  
 19 must undertake; authorizing the department and the agency  
 20 to identify pilot sites within the state where the  
 21 community mental health and substance abuse forensic  
 22 treatment system will be implemented; amending s. 394.655,  
 23 F.S.; providing for additional functions of the Criminal  
 24 Justice, Mental Health, and Substance Abuse Policy  
 25 Council; amending s. 394.656, F.S.; requiring the  
 26 department and the agency to cooperate with counties that  
 27 receive grants funding under the Criminal Justice, Mental  
 28 Health, and Substance Abuse Reinvestment Grant Program;

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29 | amending s. 394.657, F.S.; requiring county councils to  
 30 | consult with local government when planning or  
 31 | implementing the Community Mental Health and Substance  
 32 | Abuse Treatment and Crime Reduction Act; amending s.  
 33 | 394.659, F.S.; requiring the Criminal Justice, Mental  
 34 | Health, and Substance Abuse Technical Assistance Center at  
 35 | the Louis de la Parte Florida Mental Health Institute at  
 36 | the University of South Florida to perform certain  
 37 | functions with respect to implementing the act; amending  
 38 | s. 409.906, F.S.; adding home and community-based mental  
 39 | health services to the optional Medicaid services offered  
 40 | by the state Medicaid program; amending s. 409.912, F.S.;  
 41 | exempting persons who have serious and persistent mental  
 42 | illnesses and who are receiving services under the  
 43 | Community Mental Health and Substance Abuse Crime  
 44 | Reduction Act from MediPass and managed care plans;  
 45 | amending s. 916.107, F.S.; specifying treatment procedures  
 46 | for a client admitted to a state forensic mental health  
 47 | treatment facility who lacks the capacity to make an  
 48 | informed decision regarding mental health treatment at the  
 49 | time of admission; amending s. 916.111, F.S.; providing  
 50 | for forensic evaluator training for mental health experts;  
 51 | amending s. 916.115, F.S.; requiring court-appointed  
 52 | experts to have completed forensic evaluator training;  
 53 | requiring the court-appointed expert to be a psychiatrist  
 54 | or a licensed psychologist; requiring the Department of  
 55 | Children and Family Services to maintain and annually  
 56 | provide the courts with a forensic evaluator registry;

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57 | amending s. 916.13, F.S.; providing time frames by which  
 58 | competency hearings are held; amending s. 916.15, F.S.;  
 59 | providing time frames by which commitment hearings are  
 60 | held; amending s. 916.17, F.S.; requiring that certain  
 61 | defendants be placed in a community residential facility  
 62 | for competency restoration in demonstration areas  
 63 | established under the Community Mental Health and  
 64 | Substance Abuse Treatment and Crime Reduction Act;  
 65 | providing exceptions; amending s. 985.19, F.S.; requiring  
 66 | that appointed experts complete the forensic evaluator  
 67 | training program; providing an effective date.

68 |  
 69 | Be It Enacted by the Legislature of the State of Florida:

70 |  
 71 | Section 1. Section 394.9086, Florida Statutes, is created  
 72 | to read:

73 | 394.9086 Community Mental Health and Substance Abuse  
 74 | Treatment and Crime Reduction Act.--

75 | (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature  
 76 | finds that many jail inmates who have serious mental illnesses  
 77 | and who are committed to state forensic mental health treatment  
 78 | facilities for competency restoration could be served more  
 79 | effectively and at less cost in community-based alternative  
 80 | programs. The Legislature further finds that many people who  
 81 | have serious mental illnesses and who have been discharged from  
 82 | state forensic mental health treatment facilities could avoid  
 83 | recidivism to the criminal justice and forensic mental health  
 84 | systems if they received specialized treatment in the community.

85 It is therefore the intent of the Legislature to create the  
 86 Community Mental Health and Substance Abuse Treatment and Crime  
 87 Reduction Act to serve individuals who have mental illnesses or  
 88 co-occurring mental illnesses and substance abuse disorders and  
 89 who are involved in or at risk of entering state forensic mental  
 90 health treatment facilities, prisons, jails, juvenile justice  
 91 centers, or state civil mental health treatment facilities.

92 (2) GOALS.--The goals of the community mental health and  
 93 substance abuse forensic treatment system are to:

94 (a) Ensure public safety;

95 (b) Ensure that services to restore forensic competency  
 96 are provided in the least restrictive, least costly, and most  
 97 effective environment;

98 (c) Provide competency-restoration services in the  
 99 community when appropriate, based on consideration of public  
 100 safety, needs of the individual, and available resources;

101 (d) Reduce admissions for competency restoration to state  
 102 forensic mental health treatment facilities;

103 (e) Reduce rates of arrest, incarceration, and  
 104 reincarceration;

105 (f) Increase outreach and services to individuals at risk  
 106 for involvement in the criminal justice, juvenile justice, or  
 107 forensic mental health systems; and

108 (g) Support collaboration among state and local  
 109 stakeholders, including law enforcement agencies, courts, state  
 110 agencies, jails, county government, service providers,  
 111 individuals with mental illnesses or co-occurring mental  
 112 illnesses and substance abuse disorders, family members,  
 113 advocates, and other community members.

114 (3) DEFINITIONS.--As used in this section, the term:

115           (a) "Agency" means the Agency for Health Care  
 116 Administration.

117           (b) "Best practices" means treatment services that  
 118 incorporate the most effective and acceptable interventions  
 119 available in the care and treatment of individuals who are  
 120 diagnosed as having a mental illness or a co-occurring mental  
 121 illness and substance abuse disorder.

122           (c) "Community forensic system" means the community mental  
 123 health and substance abuse forensic treatment system, including  
 124 the comprehensive set of services and supports provided to  
 125 individuals involved in or at risk of becoming involved in the  
 126 criminal justice system.

127           (d) "Community residential facility" means a community-  
 128 based residential treatment setting licensed by the agency under  
 129 s. 394.875 or s. 429.075, or the department under s. 397.401.

130           (e) "Department" means the Department of Children and  
 131 Family Services.

132           (f) "Evidence-based practices" means interventions and  
 133 strategies that, based on the best available empirical research,  
 134 demonstrate effective and efficient outcomes in the care and  
 135 treatment of individuals who are diagnosed as having mental  
 136 illnesses or co-occurring mental illnesses and substance use  
 137 disorders.

138           (g) "Forensic intensive care management" means activities  
 139 addressing the comprehensive psychiatric, social, and support  
 140 needs of individuals who are diagnosed as having serious and  
 141 persistent mental illnesses, co-occurring disorders, or severe  
 142 emotional disturbances, and who are involved in the justice  
 143 system and receiving services under this section. Activities  
 144 include, but are not limited to, service planning, service

145 coordination, monitoring, and assistance with accessing federal,  
 146 state, and local benefits necessary to sustain a person in the  
 147 community.

148 (h) "Geographic area" means a county, circuit, regional,  
 149 or multiregional area in this state.

150 (4) SERVICE SYSTEM.--The department, in consultation with  
 151 the agency, shall develop and implement a community mental  
 152 health and substance abuse forensic treatment system. The  
 153 community forensic system must build on local community  
 154 diversion and reentry initiatives and strategies that are  
 155 consistent with those identified and supported under s.  
 156 394.658(1).

157 (a) The community forensic system initiatives and  
 158 strategies may include, but are not limited to:

- 159 1. Mental health courts;
- 160 2. Diversion programs;
- 161 3. Alternative prosecution and sentencing techniques;
- 162 4. Crisis intervention teams;
- 163 5. Specialized training for criminal justice, juvenile  
 164 justice, and treatment services professionals;
- 165 6. Specialized probation officers at the state and county  
 166 levels to serve individuals under correctional control in the  
 167 community;
- 168 7. Collateral services such as supported, transitional,  
 169 and permanent housing, and supported employment; and
- 170 8. Reentry services to create or expand mental health and  
 171 co-occurring treatment and supports for affected individuals.

172 (b) The community forensic system must include a  
 173 comprehensive continuum of care and services that use evidence-  
 174 based and best practices to address co-occurring mental health

175 and substance abuse disorders. The community forensic system  
 176 must include the following minimum services and elements:

177 1. Competency-restoration and treatment services provided  
 178 in a variety of settings from least restrictive to progressively  
 179 more restrictive settings;

180 2. Forensic intensive care management;

181 3. Supported housing;

182 4. Supported employment;

183 5. Medication management;

184 6. Trauma-specific services for treatment of the effects  
 185 of sexual, physical, and emotional abuse or trauma experienced  
 186 by individuals who have mental illnesses and are involved in the  
 187 criminal justice system;

188 7. Residential services to address crisis episodes and  
 189 short-term residential treatment;

190 8. Treatment for co-occurring mental health and substance  
 191 use disorders;

192 9. Outreach and education for individuals and their  
 193 families who are at risk of further involvement with the justice  
 194 system;

195 (10) Utilization of involuntary outpatient placement for  
 196 individuals meeting the criteria as provided under s. 394.4655  
 197 and conditional release for individuals adjudicated incompetent  
 198 to proceed due to mental illness or not guilty by reason of  
 199 insanity as provided under s. 916.17; and

200 11. Other services or supports as identified.

201 (5) ELIGIBILITY.--The department may serve individuals who  
 202 meet the criteria in this subsection. The department must give  
 203 highest priority for services under this section to:

204 (a) Adults who are adjudicated incompetent to proceed or

205 not guilty by reason of insanity under chapter 916 and ordered  
 206 by the court into forensic commitment, whose current most  
 207 serious charge is a felony of the third degree or a felony of  
 208 the second degree if the felony did not involve violence, and  
 209 who meet public safety criteria established by the court and  
 210 treatability criteria established by the department for  
 211 placement in a community setting.

212 (b) Adults who experience serious and persistent mental  
 213 illnesses re-entering the community from state prisons.

214 (c) Adults who have been committed to a state forensic  
 215 mental health treatment facility after being adjudicated  
 216 incompetent to proceed or not guilty by reason of insanity, and  
 217 are released or are pending release to the community by the  
 218 court after completing competency restoration services or being  
 219 found to no longer meet the criteria for continued commitment  
 220 placement.

221 (d) Adults who experience serious and persistent mental  
 222 illnesses, who have a history of involvement in the justice  
 223 system, or who are at risk of entering or are already involved  
 224 with the criminal justice system.

225 (e) Children deemed incompetent to proceed under s.  
 226 985.19.

227 (6) DEPARTMENT RESPONSIBILITIES.--The department shall  
 228 develop a continuum of services to implement the Community  
 229 Mental Health and Substance Abuse Treatment and Crime Reduction  
 230 Act in accordance with subsection (4). The department shall:

231 (a) Define requirements for all providers in the community  
 232 forensic system.

233 (b) Select demonstration sites for participation, based on  
 234 criteria in subsection (7), which demonstrate active and



235 sustained participation in community collaborations.  
 236 (c) Enter into memorandums of agreement with county  
 237 planning councils or committees identified in s. 394.657, which  
 238 are included in the demonstration sites.  
 239 (d) Identify providers to implement the continuum of  
 240 services. The department shall consult with county planning  
 241 councils or committees in the selection process.  
 242 (e) Establish performance measures and reporting  
 243 requirements for providers participating in the community  
 244 forensic system. The measures shall include, at a minimum:  
 245 1. The number of individuals diverted from state forensic  
 246 mental health treatment facilities;  
 247 2. The number of individuals diverted from the criminal  
 248 justice system;  
 249 3. The rates of arrest, incarceration, and reincarceration  
 250 for new criminal offenses;  
 251 4. The rates of employment; and  
 252 5. The annual number of days in a crisis stabilization  
 253 unit, detoxification facility, short-term residential treatment  
 254 program, state civil mental health treatment facility, or state  
 255 forensic mental health treatment facility.  
 256 (f) Monitor contracts for compliance with terms, and at  
 257 least annually and to the extent possible, perform joint onsite  
 258 monitoring with the agency and the Criminal Justice, Mental  
 259 Health, and Substance Abuse Technical Assistance Center,  
 260 established under s. 394.659, to assess performance of the  
 261 contract.  
 262 (7) IMPLEMENTATION.—The Department is authorized to  
 263 implement this act within available resources. In expectation  
 264 of statewide implementation of this section, the department in

265 consultation with the agency may identify three pilot sites.  
 266 Pilots will be located in the Northwest, Southern and Tampa Bay  
 267 Areas of the state for initial implementation. All areas must be  
 268 selected based on findings of community readiness and the  
 269 potential for affecting the greatest number of individuals  
 270 entering the forensic mental health and criminal justice  
 271 systems. Criteria for selection may include:

272 (a) Community readiness to deliver the services outlined  
 273 in subsection (4), demonstrated by well-established community  
 274 collaboration plans and local partnerships as evidenced by  
 275 memorandums of agreement that are submitted to and approved by  
 276 the department;

277 (b) A high bed-utilization rate at state forensic mental  
 278 health treatment facilities;

279 (c) Successful application for implementation grant  
 280 funding under the Criminal Justice, Mental Health, and Substance  
 281 Abuse Reinvestment Grant Program; and

282 (d) Other elements determined by the department in  
 283 consultation with the agency.

284 Section 2. Paragraph (b) of subsection (11) of section  
 285 394.655, Florida Statutes, is amended to read:

286 394.655 The Substance Abuse and Mental Health Corporation;  
 287 powers and duties; composition; evaluation and reporting  
 288 requirements.--

289 (11)

290 (b) The purpose of the council shall be to:

291 1. Align policy initiatives in the criminal justice,  
 292 juvenile justice, ~~and~~ mental health, and substance abuse systems  
 293 to ensure the most effective use of resources and to coordinate

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294 the development of legislative proposals and budget requests  
 295 relating to the shared needs of adults and juveniles who have a  
 296 mental illness, substance abuse disorder, or co-occurring mental  
 297 health and substance abuse disorders who are in, or at risk of  
 298 entering, the criminal justice system.

299 2. Provide consultation in the development of  
 300 comprehensive and cost-effective community-based mental health  
 301 and substance abuse treatment services for individuals who have  
 302 mental illnesses and who are receiving services in state  
 303 forensic mental health treatment facilities, juvenile secure  
 304 residential treatment centers specializing in competency  
 305 training, prisons, jails, and juvenile justice centers. The  
 306 council shall appoint an advisory committee to review and  
 307 monitor the implementation of the Community Mental Health and  
 308 Substance Abuse Treatment and Crime Reduction Act. The advisory  
 309 committee shall include at least one person who has received  
 310 services and one family member of a person who has received  
 311 services under this section.

312 Section 3. Subsection (1) of section 394.656, Florida  
 313 Statutes, is amended to read:

314 394.656 Criminal Justice, Mental Health, and Substance  
 315 Abuse Reinvestment Grant Program.--

316 (1) There is created within the Department of Children and  
 317 Family Services the Criminal Justice, Mental Health, and  
 318 Substance Abuse Reinvestment Grant Program. The purpose of the  
 319 program is to provide funding to counties with which they can  
 320 plan, implement, or expand initiatives that increase public  
 321 safety, avert increased spending on criminal justice, and

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322 improve the accessibility and effectiveness of treatment  
 323 services for adults and juveniles who have a mental illness,  
 324 substance abuse disorder, or co-occurring mental health and  
 325 substance abuse disorders and who are in, or at risk of  
 326 entering, the criminal or juvenile justice systems. In  
 327 implementing the Community Mental Health and Substance Abuse  
 328 Treatment and Crime Reduction Act, the department and agency  
 329 shall work in coordination with counties that received grants  
 330 under the Criminal Justice, Mental Health, and Substance Abuse  
 331 Reinvestment Grant Program to develop local treatment and  
 332 service delivery infrastructures.

333 Section 4. Subsection (1) of section 394.657, Florida  
 334 Statutes, is amended to read:

335 394.657 County planning councils or committees.--

336 (1) Each board of county commissioners shall designate the  
 337 county public safety coordinating council established under s.  
 338 951.26, or designate another criminal or juvenile justice mental  
 339 health and substance abuse council or committee, as the planning  
 340 council or committee. The public safety coordinating council or  
 341 other designated criminal or juvenile justice mental health and  
 342 substance abuse council or committee shall:

343 (a) Coordinate ~~in coordination~~ with the county offices of  
 344 planning and budget ~~to, shall~~ make a formal recommendation to  
 345 the board of county commissioners regarding how the Criminal  
 346 Justice, Mental Health, and Substance Abuse Reinvestment Grant  
 347 Program may best be implemented within a community. The board of  
 348 county commissioners may assign any entity to prepare the  
 349 application on behalf of the county administration for

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350 submission to the corporation for review. A county may join with  
 351 one or more counties to form a consortium and use a regional  
 352 public safety coordinating council or another county-designated  
 353 regional criminal or juvenile justice mental health and  
 354 substance abuse planning council or committee for the geographic  
 355 area represented by the member counties.

356 (b) Consult with local governing bodies when planning or  
 357 implementing the Community Mental Health and Substance Abuse  
 358 Treatment and Crime Reduction Act.

359 Section 5. Paragraphs (g), (h), and (i) are added to  
 360 subsection (1) of section 394.659, Florida Statutes, to read:

361 394.659 Criminal Justice, Mental Health, and Substance  
 362 Abuse Technical Assistance Center.--

363 (1) There is created a Criminal Justice, Mental Health,  
 364 and Substance Abuse Technical Assistance Center at the Louis de  
 365 la Parte Florida Mental Health Institute at the University of  
 366 South Florida, which shall:

367 (g) In coordination with the department, develop minimum  
 368 competencies and proficiencies required for communities and  
 369 service providers.

370 (h) Identify evidence-based and best practices and deliver  
 371 necessary training and consultation to service providers.

372 (i) Assist the department in developing outcome measures.

373 (j) Provide an annual report by October 1 to the Governor,  
 374 the President of the Senate, the Speaker of the House of  
 375 Representatives, the Chief Justice of the Florida Supreme Court,  
 376 and the State Courts Administrator on the status of  
 377 implementation of the Community Mental Health and Substance

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378 Abuse Treatment and Crime Reduction Act. For those areas that  
 379 also have a grant under subsection (2), the institute shall  
 380 prepare a joint report to avoid duplication.

381 Section 6. Subsection (28) is added to section 409.906,  
 382 Florida Statutes, to read:

383 409.906 Optional Medicaid services.--Subject to specific  
 384 appropriations, the agency may make payments for services which  
 385 are optional to the state under Title XIX of the Social Security  
 386 Act and are furnished by Medicaid providers to recipients who  
 387 are determined to be eligible on the dates on which the services  
 388 were provided. Any optional service that is provided shall be  
 389 provided only when medically necessary and in accordance with  
 390 state and federal law. Optional services rendered by providers  
 391 in mobile units to Medicaid recipients may be restricted or  
 392 prohibited by the agency. Nothing in this section shall be  
 393 construed to prevent or limit the agency from adjusting fees,  
 394 reimbursement rates, lengths of stay, number of visits, or  
 395 number of services, or making any other adjustments necessary to  
 396 comply with the availability of moneys and any limitations or  
 397 directions provided for in the General Appropriations Act or  
 398 chapter 216. If necessary to safeguard the state's systems of  
 399 providing services to elderly and disabled persons and subject  
 400 to the notice and review provisions of s. 216.177, the Governor  
 401 may direct the Agency for Health Care Administration to amend  
 402 the Medicaid state plan to delete the optional Medicaid service  
 403 known as "Intermediate Care Facilities for the Developmentally  
 404 Disabled." Optional services may include:

405 (28) HOME AND COMMUNITY-BASED SERVICES.-The agency,

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406 contingent upon appropriation of funds for this purpose, may  
 407 seek federal approval through a state plan amendment to  
 408 implement home and community-based services under the authority  
 409 of and in compliance with s. 1915i of the Social Security Act  
 410 for services provided to individuals who have been determined by  
 411 an independent evaluation to have disabilities that cause them  
 412 to become, or put them at risk of becoming, involved with the  
 413 criminal justice system due to their mental illness. In  
 414 accordance with allowances under s. 1915i of the Social Security  
 415 Act, these services may be limited to a select number of  
 416 eligible individuals in select geographic areas, as identified  
 417 by the agency. Eligible individuals may have incomes up to 150  
 418 percent of the federal poverty level. The agency shall  
 419 coordinate with the department to select and define the services  
 420 that will be submitted in the state plan amendment and be  
 421 provided under this subsection. The agency may disenroll from  
 422 enrollment in MediPass, or any capitated or other Medicaid  
 423 managed care arrangements, those individuals receiving services  
 424 under this subsection. Enrollment in state plan services may not  
 425 exceed 1,000 individuals unless additional approval is obtained  
 426 from the Legislature. The agency must receive approval from the  
 427 Legislature or Legislative Budget Commission for any funding  
 428 beyond that which is provided within initial implementation  
 429 revenues. After July 1, 2012, the agency may consider seeking  
 430 authority to capitate Medicaid behavioral health services under  
 431 this subsection.

432 Section 7. Subsection (54) is added to section 409.912,  
 433 Florida Statutes, to read:

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434           409.912 Cost-effective purchasing of health care.--The  
 435 agency shall purchase goods and services for Medicaid recipients  
 436 in the most cost-effective manner consistent with the delivery  
 437 of quality medical care. To ensure that medical services are  
 438 effectively utilized, the agency may, in any case, require a  
 439 confirmation or second physician's opinion of the correct  
 440 diagnosis for purposes of authorizing future services under the  
 441 Medicaid program. This section does not restrict access to  
 442 emergency services or poststabilization care services as defined  
 443 in 42 C.F.R. part 438.114. Such confirmation or second opinion  
 444 shall be rendered in a manner approved by the agency. The agency  
 445 shall maximize the use of prepaid per capita and prepaid  
 446 aggregate fixed-sum basis services when appropriate and other  
 447 alternative service delivery and reimbursement methodologies,  
 448 including competitive bidding pursuant to s. 287.057, designed  
 449 to facilitate the cost-effective purchase of a case-managed  
 450 continuum of care. The agency shall also require providers to  
 451 minimize the exposure of recipients to the need for acute  
 452 inpatient, custodial, and other institutional care and the  
 453 inappropriate or unnecessary use of high-cost services. The  
 454 agency shall contract with a vendor to monitor and evaluate the  
 455 clinical practice patterns of providers in order to identify  
 456 trends that are outside the normal practice patterns of a  
 457 provider's professional peers or the national guidelines of a  
 458 provider's professional association. The vendor must be able to  
 459 provide information and counseling to a provider whose practice  
 460 patterns are outside the norms, in consultation with the agency,  
 461 to improve patient care and reduce inappropriate utilization.



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462 The agency may mandate prior authorization, drug therapy  
463 management, or disease management participation for certain  
464 populations of Medicaid beneficiaries, certain drug classes, or  
465 particular drugs to prevent fraud, abuse, overuse, and possible  
466 dangerous drug interactions. The Pharmaceutical and Therapeutics  
467 Committee shall make recommendations to the agency on drugs for  
468 which prior authorization is required. The agency shall inform  
469 the Pharmaceutical and Therapeutics Committee of its decisions  
470 regarding drugs subject to prior authorization. The agency is  
471 authorized to limit the entities it contracts with or enrolls as  
472 Medicaid providers by developing a provider network through  
473 provider credentialing. The agency may competitively bid single-  
474 source-provider contracts if procurement of goods or services  
475 results in demonstrated cost savings to the state without  
476 limiting access to care. The agency may limit its network based  
477 on the assessment of beneficiary access to care, provider  
478 availability, provider quality standards, time and distance  
479 standards for access to care, the cultural competence of the  
480 provider network, demographic characteristics of Medicaid  
481 beneficiaries, practice and provider-to-beneficiary standards,  
482 appointment wait times, beneficiary use of services, provider  
483 turnover, provider profiling, provider licensure history,  
484 previous program integrity investigations and findings, peer  
485 review, provider Medicaid policy and billing compliance records,  
486 clinical and medical record audits, and other factors. Providers  
487 shall not be entitled to enrollment in the Medicaid provider  
488 network. The agency shall determine instances in which allowing  
489 Medicaid beneficiaries to purchase durable medical equipment and

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490 other goods is less expensive to the Medicaid program than long-  
 491 term rental of the equipment or goods. The agency may establish  
 492 rules to facilitate purchases in lieu of long-term rentals in  
 493 order to protect against fraud and abuse in the Medicaid program  
 494 as defined in s. 409.913. The agency may seek federal waivers  
 495 necessary to administer these policies.

496 (54) Persons who have serious and persistent mental  
 497 illnesses, who are receiving services under the Community Mental  
 498 Health and Substance Abuse Crime Reduction Act, and who are  
 499 eligible for and receiving services under the state plan  
 500 implemented under s. 1915i of the Social Security Act, as  
 501 approved by the Centers for Medicare and Medicaid Services, are  
 502 exempt from MediPass and managed care plans authorized under  
 503 this chapter, including capitated managed care plans authorized  
 504 under s. 409.91211.

505 Section 8. Paragraph (a) of subsection (3) of section  
 506 916.107, Florida Statutes, is amended to read:

507 916.107 Rights of forensic clients.--

508 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

509 (a) A forensic client shall be asked to give express and  
 510 informed written consent for treatment. If a client refuses such  
 511 treatment as is deemed necessary and essential by the client's  
 512 multidisciplinary treatment team for the appropriate care of the  
 513 client, such treatment may be provided under the following  
 514 circumstances:

515 1. In an emergency situation in which there is immediate  
 516 danger to the safety of the client or others, such treatment may  
 517 be provided upon the written order of a physician for a period

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518 not to exceed 48 hours, excluding weekends and legal holidays.  
 519 If, after the 48-hour period, the client has not given express  
 520 and informed consent to the treatment initially refused, the  
 521 administrator or designee of the civil or forensic facility  
 522 shall, within 48 hours, excluding weekends and legal holidays,  
 523 petition the committing court or the circuit court serving the  
 524 county in which the facility is located, at the option of the  
 525 facility administrator or designee, for an order authorizing the  
 526 continued treatment of the client. In the interim, the need for  
 527 treatment shall be reviewed every 48 hours and may be continued  
 528 without the consent of the client upon the continued written  
 529 order of a physician who has determined that the emergency  
 530 situation continues to present a danger to the safety of the  
 531 client or others.

532 2. In a situation other than an emergency situation, the  
 533 administrator or designee of the facility shall petition the  
 534 court for an order authorizing necessary and essential treatment  
 535 for the client.

536 a. If the client has been receiving psychotherapeutic  
 537 medication at the jail at the time of transfer to the state  
 538 forensic mental health treatment facility and lacks the capacity  
 539 to make an informed decision regarding mental health treatment  
 540 at the time of admission, the admitting physician may order a  
 541 continuation of the psychotherapeutic medication if, in the  
 542 clinical judgment of the physician, abrupt cessation of the  
 543 psychotherapeutic medication could cause a risk to the health  
 544 and safety of the client during the time a court order to  
 545 medicate is pursued. The jail physician shall provide a current

546 psychotherapeutic medication order at the time of transfer to  
 547 the admitting facility.

548       **b.** The court order shall allow such treatment for a period  
 549 not to exceed 90 days following the date of the entry of the  
 550 order. Unless the court is notified in writing that the client  
 551 has provided express and informed consent in writing or that the  
 552 client has been discharged by the committing court, the  
 553 administrator or designee shall, prior to the expiration of the  
 554 initial 90-day order, petition the court for an order  
 555 authorizing the continuation of treatment for another 90-day  
 556 period. This procedure shall be repeated until the client  
 557 provides consent or is discharged by the committing court.

558       **3.** At the hearing on the issue of whether the court should  
 559 enter an order authorizing treatment for which a client was  
 560 unable to or refused to give express and informed consent, the  
 561 court shall determine by clear and convincing evidence that the  
 562 client has mental illness, retardation, or autism, that the  
 563 treatment not consented to is essential to the care of the  
 564 client, and that the treatment not consented to is not  
 565 experimental and does not present an unreasonable risk of  
 566 serious, hazardous, or irreversible side effects. In arriving at  
 567 the substitute judgment decision, the court must consider at  
 568 least the following factors:

- 569           a. The client's expressed preference regarding treatment;
- 570           b. The probability of adverse side effects;
- 571           c. The prognosis without treatment; and
- 572           d. The prognosis with treatment.

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574 The hearing shall be as convenient to the client as may be  
 575 consistent with orderly procedure and shall be conducted in  
 576 physical settings not likely to be injurious to the client's  
 577 condition. The court may appoint a general or special magistrate  
 578 to preside at the hearing. The client or the client's guardian,  
 579 and the representative, shall be provided with a copy of the  
 580 petition and the date, time, and location of the hearing. The  
 581 client has the right to have an attorney represent him or her at  
 582 the hearing, and, if the client is indigent, the court shall  
 583 appoint the office of the public defender to represent the  
 584 client at the hearing. The client may testify or not, as he or  
 585 she chooses, and has the right to cross-examine witnesses and  
 586 may present his or her own witnesses.

587 Section 9. Section 916.111, Florida Statutes, is amended  
 588 to read:

589 916.111 Training of mental health experts.--The evaluation  
 590 of defendants for competency to proceed or for sanity at the  
 591 time of the commission of the offense shall be conducted in such  
 592 a way as to ensure uniform application of the criteria  
 593 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal  
 594 Procedure.

595 (1) A forensic evaluator training course approved by the  
 596 department must be provided at least annually to ensure that  
 597 mental health professionals have the opportunity to be placed on  
 598 the department's forensic evaluator registry.

599 (a) Beginning July 1, 2010, experts shall remain on the  
 600 registry if they have completed or retaken the required training  
 601 within the previous 5 years. Those who have not completed the

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602 required training within the previous 5 years shall be removed  
 603 from the registry and may not conduct evaluations for the  
 604 courts.

605 (b) A mental health professional who has completed the  
 606 training course within the previous 5 years is responsible for  
 607 maintaining documentation of completion of the required training  
 608 and providing to the department current contact information.

609 (2) The department shall develop, and may contract with  
 610 accredited institutions:

611 (a)~~(1)~~ To provide:

612 1.~~(a)~~ A plan for training mental health professionals to  
 613 perform forensic evaluations and to standardize the criteria and  
 614 procedures to be used in these evaluations;

615 2.~~(b)~~ Clinical protocols and procedures based upon the  
 616 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal  
 617 Procedure; and

618 3.~~(e)~~ Training for mental health professionals in the  
 619 application of these protocols and procedures in performing  
 620 forensic evaluations and providing reports to the courts; and

621 (b)~~(2)~~ To compile and maintain the necessary information  
 622 for evaluating the success of this program, including the number  
 623 of persons trained, the cost of operating the program, and the  
 624 effect on the quality of forensic evaluations as measured by  
 625 appropriateness of admissions to state forensic facilities and  
 626 to community-based care programs.

627 Section 10. Subsection (1) of section 916.115, Florida  
 628 Statutes, is amended to read:

629 916.115 Appointment of experts.--

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630 (1) The court shall appoint no more than three experts to  
 631 determine the mental condition of a defendant in a criminal  
 632 case, including competency to proceed, insanity, involuntary  
 633 placement, and treatment. The experts may evaluate the defendant  
 634 in jail or in another appropriate local facility or in a  
 635 facility of the Department of Corrections.

636 (a) ~~To the extent possible,~~ The appointed experts shall  
 637 have completed forensic evaluator training as provided in s.  
 638 916.111 ~~approved by the department,~~ and each shall be a  
 639 psychiatrist, or licensed psychologist, ~~or physician.~~

640 (b) The department shall maintain and annually provide the  
 641 courts with a forensic evaluator registry ~~list~~ of available  
 642 mental health professionals who have completed the approved  
 643 training as experts.

644 Section 11. Section 916.13, Florida Statutes, is amended  
 645 to read:

646 916.13 Involuntary commitment of defendant adjudicated  
 647 incompetent.--

648 (1) Every defendant who is charged with a felony and who  
 649 is adjudicated incompetent to proceed may be involuntarily  
 650 committed for treatment upon a finding by the court of clear and  
 651 convincing evidence that:

652 (a) The defendant has a mental illness and because of the  
 653 mental illness:

654 1. The defendant is manifestly incapable of surviving  
 655 alone or with the help of willing and responsible family or  
 656 friends, including available alternative services, and, without  
 657 treatment, the defendant is likely to suffer from neglect or

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658 | refuse to care for herself or himself and such neglect or  
 659 | refusal poses a real and present threat of substantial harm to  
 660 | the defendant's well-being; or

661 |         2. There is a substantial likelihood that in the near  
 662 | future the defendant will inflict serious bodily harm on herself  
 663 | or himself or another person, as evidenced by recent behavior  
 664 | causing, attempting, or threatening such harm;

665 |         (b) All available, less restrictive treatment  
 666 | alternatives, including treatment in community residential  
 667 | facilities or community inpatient or outpatient settings, which  
 668 | would offer an opportunity for improvement of the defendant's  
 669 | condition have been judged to be inappropriate; and

670 |         (c) There is a substantial probability that the mental  
 671 | illness causing the defendant's incompetence will respond to  
 672 | treatment and the defendant will regain competency to proceed in  
 673 | the reasonably foreseeable future.

674 |         (2) (a) A defendant who has been charged with a felony and  
 675 | who has been adjudicated incompetent to proceed due to mental  
 676 | illness, and who meets the criteria for involuntary commitment  
 677 | ~~to the department under the provisions of this chapter,~~ may be  
 678 | committed to the department, and the department shall retain and  
 679 | treat the defendant. Within ~~No later than~~ 6 months after the  
 680 | date of admission and at the end of any period of extended  
 681 | commitment, or at any time the administrator or designee shall  
 682 | have determined that the defendant has regained competency to  
 683 | proceed or no longer meets the criteria for continued  
 684 | commitment, the administrator or designee shall file a report  
 685 | with the court pursuant to the applicable Florida Rules of



686 Criminal Procedure.

687 (b) Within 15 days after the court receives notification  
 688 that a defendant is competent to proceed or no longer meets the  
 689 criteria for continued commitment, the defendant shall be  
 690 transported back to jail pursuant to s. 916.107(10) for the  
 691 purpose of holding a competency hearing

692 (c) A competency hearing shall be held within 45 days  
 693 after a court receives notification that the defendant is  
 694 competent to proceed or no longer meets criteria for continued  
 695 commitment.

696 Section 12. Present subsection (4) of section 916.15,  
 697 Florida Statutes, is renumbered as subsection (6), and new  
 698 subsections (4) and (5) are added to that section, to read:

699 916.15 Involuntary commitment of defendant adjudicated not  
 700 guilty by reason of insanity.--

701 (4) (a) Within 15 days after the court is notified that a  
 702 defendant no longer meets the criteria for involuntary  
 703 commitment placement, the defendant shall be transported back to  
 704 jail for the purpose of holding a commitment hearing.

705 (b) The commitment hearing must be held within 45 days  
 706 after the court receives notification that the defendant no  
 707 longer meets the criteria for continued commitment placement.

708 Section 13. Present subsections (2) and (3) of section  
 709 916.17, Florida Statutes, are renumbered as subsections (3) and  
 710 (4), respectively, and a new subsection (2) is added to that  
 711 section, to read:

712 916.17 Conditional release.--

713 (2) A defendant who otherwise meets the criteria for

714 involuntary commitment under s. 916.13, but whose current most  
 715 serious charge is a felony of the third degree or a felony of  
 716 the second degree when the felony did not involve violence, must  
 717 be placed in a community residential facility for competency  
 718 restoration in pilot sites established in s. 394.9086, unless  
 719 bed space or funding is unavailable for the community placement,  
 720 or the trial court makes an explicit finding that the defendant  
 721 cannot be safely managed in such a placement. In making the  
 722 determination under this subsection, the court shall consider  
 723 all of the following:

- 724 (a) The nature and seriousness of the crime allegedly  
 725 committed.
- 726 (b) The individual's criminal history.
- 727 (c) The individual's psychiatric history.
- 728 (d) The individual's history of violent behavior or  
 729 threats of violent behavior, and risk of harm to self or others.
- 730 (e) The likelihood that the individual will comply with  
 731 and benefit from the mental health treatment and services being  
 732 recommended.
- 733 (f) The availability of appropriate community-based  
 734 services and treatment settings.
- 735 (g) Other information considered relevant by the court.

736 Section 14. Paragraphs (b) and (d) of subsection (1) of  
 737 section 985.19, Florida Statutes, are amended to read:

738 985.19 Incompetency in juvenile delinquency cases.--

739 (1) If, at any time prior to or during a delinquency case,  
 740 the court has reason to believe that the child named in the  
 741 petition may be incompetent to proceed with the hearing, the

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742 court on its own motion may, or on the motion of the child's  
743 attorney or state attorney must, stay all proceedings and order  
744 an evaluation of the child's mental condition.

745 (b) All determinations of competency shall be made at a  
746 hearing, with findings of fact based on an evaluation of the  
747 child's mental condition made by not less than two nor more than  
748 three experts appointed by the court. The basis for the  
749 determination of incompetency must be specifically stated in the  
750 evaluation and must be conducted in such a way as to ensure  
751 uniform application of the criteria enumerated in Rule 8.095,  
752 Florida Rules of Juvenile Procedure. In addition, a  
753 recommendation as to whether residential or nonresidential  
754 treatment or training is required must be included in the  
755 evaluation. Experts appointed by the court to determine the  
756 mental condition of a child shall be allowed reasonable fees for  
757 services rendered. State employees may be paid expenses pursuant  
758 to s. 112.061. The fees shall be taxed as costs in the case.

759 (d) Appointed experts must have completed forensic  
760 evaluator training approved by the Department of Children and  
761 Family Services within 5 years prior to conducting evaluations  
762 for the court, and each must be a psychiatrist or licensed  
763 psychologist. For incompetency evaluations related to mental  
764 illness, the Department of Children and Family Services shall  
765 maintain and annually provide the courts with a list of  
766 available mental health professionals who have completed a  
767 training program approved by the Department of Children and  
768 Family Services to perform the evaluations. (e) Beginning July  
769 1, 2010, experts shall remain on the registry if they have

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770 completed or retaken the required training within the previous 5  
771 years. Those who have not completed the required training within  
772 the previous 5 years shall be removed from the registry and may  
773 not conduct evaluations for the courts.

774 (f) A mental health professional who has completed the  
775 training course within the previous 5 years is responsible for  
776 maintaining documentation of completion of the required training  
777 and providing to the Department of Children and Family Services  
778 current contact information.

779 Section 15. This act shall take effect July 1, 2009.