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# **Health & Human Services Access Subcommittee**

## **Meeting Packet**

**Tuesday, January 17, 2012**

**3:30 – 6:00 PM**

**Webster Hall (212 Knott)**

**Dean Cannon  
Speaker**

**Dennis K. Baxley  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Health & Human Services Access Subcommittee

**Start Date and Time:** Tuesday, January 17, 2012 03:30 pm

**End Date and Time:** Tuesday, January 17, 2012 06:00 pm

**Location:** Webster Hall (212 Knott)

**Duration:** 2.50 hrs

**Consideration of the following bill(s):**

HB 943 Background Screening by Holder

HB 1097 Sexually Violent Predators by Kreegel

HB 529 Adult Day Care Centers by Corcoran

HB 1195 Advanced Registered Nurse Practitioners by Campbell

HB 1045 Mental Health by Schwartz

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Friday, January 13, 2012.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, January 13, 2012.

**NOTICE FINALIZED on 01/12/2012 16:14 by Villar.Melissa**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 943 Background Screening  
**SPONSOR(S):** Holder  
**TIED BILLS:** IDEN./SIM. BILLS: SB 320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Guzzo 	Schoolfield 
2) Criminal Justice Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The provisions contained in the bill are the same as those contained in CS/SB 1992, which was passed by both chambers of the legislature in the 2011 legislative session but was later vetoed by the Governor. In 2010, the Legislature substantially rewrote the requirements and procedures for background screening of the individuals and businesses that deal primarily with vulnerable populations. Owners, operators, and employees of entities that care for vulnerable persons, and many of their volunteers, are required to undergo background screening.

The bill exempts from screening or rescreening: mental health personnel working in hospitals with less than 15 hours of direct contact with adult patients per week in a hospital; Certified Nursing Assistant applicants who have successfully passed background screening within 90 days of applying for certification; and law enforcement officers working or volunteering in a capacity that would otherwise require them to be screened. The bill exempts from screening the following individuals who provide services through a direct service provider that has a contractual relationship with the Department of Elderly Affairs (DOEA):

- Volunteers with less than 20 hours per month of direct, face-to-face contact with a client;
- Individuals related by blood to the client;
- The client's spouse;
- Attorneys in good standing with the Florida Bar; and
- Individuals providing services within the scope of his or her license.

The bill provides time frames for background screenings by DOEA and the Agency for Health Care Administration (AHCA).

The bill requires electronic fingerprinting vendors to use technology systems that are compliant with the systems used by the Florida Department of Law Enforcement (FDLE) and have the ability to electronically communicate the screening results. Fingerprints will be retained by FLDE when taken on or after July 1, 2014.

Employers are allowed to hire an employee to a position that requires background screening before the screening is complete for training and orientation. The employee may not have any contact with clients until successful completion of the screening.

Personnel of an entity that provides care or care placement services as described in s. 943.0542, F.S., are allowed to apply for an exemption for disqualification.

AHCA, DOEA, FDLE, the Department of Children and Family Services, the Department of Health, the Agency for Persons with Disabilities, and the Department of Juvenile Justice are directed to create a statewide interagency background screening workgroup to develop a work plan for implementing a statewide system for streamlining background screening processes and sharing background screening information. The workgroup must report to the Legislature by November 1, 2012.

The bill has no fiscal impact on state or local government.

The bill has an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Background Screening

Florida has one of the largest vulnerable populations in the country with over 25% of the state's population over the age of 65, and many more children and disabled adults. These vulnerable populations require special care because they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for the screening of prospective employees, owners, operators, contractors, and volunteers where the Legislature had determined it necessary to conduct criminal history background screenings to protect vulnerable persons. Chapter 435, F.S., outlines the screening requirements. The Florida Department of Law Enforcement (FDLE) processes criminal history checks for the screening entity. In 2010, the Legislature substantially rewrote the requirements and procedures for background screening of these persons and businesses.<sup>1</sup> Major changes made by the 2010 legislation include:

- No person who is required to be screened may begin work until the screening has been completed.
- All Level 1<sup>2</sup> screenings were increased to Level 2<sup>3</sup> screenings.
- By July 1, 2012, all fingerprints submitted to FDLE must be submitted electronically.
- Certain personnel that were not being screened were required to begin Level 2 screening.
- The addition of serious crimes that disqualify an individual from employment working with vulnerable populations.
- Agencies were authorized to request the retention of fingerprints by FDLE.
- An exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony.
- All exemptions from disqualification may be granted only by the agency head.

Level 2 background screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).<sup>4</sup>

##### Mental Health Personnel

"Mental health personnel" are required to be Level 2 screened. "Mental health personnel" includes program directors, clinicians, staff, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals.<sup>5</sup> Volunteers that have less than ten hours per

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<sup>1</sup> Ch. 2010-114, L.O.F.

<sup>2</sup> S. 435.03, F.S. Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. A person undergoing a Level 1 screening must not have been found guilty of any of the listed offenses.

<sup>3</sup> S. 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigations (FBI) databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the listed offenses.

<sup>4</sup> *Criminal History Record Checks/Background Checks Fact Sheet* October 7, 2011. Available at <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx> (last visited January 11, 2012).

<sup>5</sup> S. 394.4572(1)(a), F.S.

month of contact with patients are not required to be screened so long as they remain in the line of sight of someone who has been Level 2 screened while having direct contact with patients.<sup>6</sup>

### **Effect of Proposed Changes**

The bill restores an exemption from screening removed last year for mental health personnel with 15 hours or less direct contact with patients per week in a hospital licensed pursuant to ch. 395, F.S. The exemption does not apply to persons working in a mental health facility where the primary purpose of the facility is the treatment of minors.

### Agency for Health Care Administration Rescreening Schedule

Persons screened under the Agency for Health Care Administration (AHCA) must be rescreened every five years. In 2010, authority was given to AHCA to establish by rule a staggered schedule for the rescreening of all persons who have a controlling interest in, is employed by, or contracts with a licensee on July 31, 2010. All such persons must be rescreened by July 31, 2015.

The bill delays until July 31, 2014, the start of the staggered period for rescreens of persons who have a controlling interest in, is employed by, or contracts with a licensee on July 31, 2010. The bill adds the schedule to statute eliminating the need for a rule.

### Summer Camps

Summer camps are not licensed by the state but owners, operators, employees, and volunteers are required to be Level 2 screened.<sup>7</sup> Volunteers that have less than ten hours per month of contact with children are not required to be screened so long as they remain in the line of sight of someone who has been Level 2 screened while having direct contact with children.<sup>8</sup>

The bill adds law enforcement officers with active certification to those licensed persons who do not have to be screened for purposes of ch. 409, F.S. The exemption will apply to law enforcement officers who work or volunteer in summer camps and other facilities regulated under ch. 409 such as foster group homes and residential child-caring agencies.

### The Department of Elderly Affairs

The Department of Elderly Affairs (DOEA) is the designated state unit on aging as defined in the Older Americans Act (OAA) of 1965.<sup>9</sup> As such, DOEA's role is to administer the state's OAA allotment and grants, and to advocate, coordinate, and plan all elder services.<sup>10</sup> The OAA requires states to provide elder services through a coordinated service delivery system through designated Area Agencies on Aging (AAAs). Chapter 430, F.S., requires DOEA to fund service delivery "lead agencies" that coordinate and provide a variety of oversight and elder support services at the consumer level in the counties within each planning and service area. DOEA is 94 percent privatized through contracts with local entities and utilizes over 45,000 volunteers to deliver information and services to elders.<sup>11</sup> Many of the volunteers are elders themselves.<sup>12</sup>

### Direct Service Providers

The 2010 revision of the background screening laws created s. 430.0402, F.S., requiring Level 2 background screenings for "direct services providers" who provide services through a contractual relationship with DOEA. A "direct service provider" is defined as a person who pursuant to a program

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<sup>6</sup> S. 394.4572(1)(c), F.S.

<sup>7</sup> S. 409.175(2)(i) and (k), F.S.

<sup>8</sup> S. 409.175(2)(i), F.S.

<sup>9</sup> S. 305(a)(1)(c), Older Americans Act.

<sup>10</sup> S. 430.04(1), F.S.

<sup>11</sup> Department of Elder Affairs, Summary of Programs and Services (2010).

<sup>12</sup> *Id.*

to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the client or has access to the client's living areas or to the client's funds or personal property. Volunteers are specifically included as "direct service providers".

The statute contains no exception from background screening for a volunteer who has occasional or limited contact with elders. In other statutes, there are exceptions for volunteers who are in brief or occasional contact with vulnerable populations. For example, s. 393.0655(1), F.S., exempts from screening a volunteer who assist with persons with developmental disabilities if the volunteer assists less than 10 hours per month and a person who has been screened is always present and has the volunteer within his or her line of sight.<sup>13</sup>

Section 430.0402, F.S., also provides that in addition to the offenses listed in s. 435.04, F.S., direct service providers must also be screened for offenses prohibited under the following:

- Any authorizing statutes, if the offense was a felony.
- Section 409.920, relating to Medicaid provider fraud.
- Section 409.9201, relating to Medicaid fraud.
- Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- Section 817.234, relating to false and fraudulent insurance claims.
- Section 817.505, relating to patient brokering.
- Section 817.568, relating to criminal use of personal identification information.
- Section 817.60, relating to obtaining a credit card through fraudulent means.
- Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
- Section 831.01, relating to forgery.
- Section 831.02, relating to uttering forged instruments.
- Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.
- Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.

Area Agencies on Aging and Elder Care Services are entities who contract with DOEA to provide services to elders. Representatives of several of these entities report that the requirement of Level 2 background screening of volunteers has dramatically reduced the number of volunteers, potentially impacting the availability of services to elders.<sup>14</sup> The Meals on Wheels program is dependent on volunteers, and the program is currently losing volunteers who cannot afford to pay for the cost of a Level 2 background screening. Senior centers, congregate meal sites, and health and wellness programs are also dependent on volunteers.

The provisions of the 2010 legislation also impacts Home Care for the Elderly (HCE)<sup>15</sup> caregivers. Many HCE caregivers are family members. These family members receive a monthly stipend of \$106 to help care for a family member at home. The stipend is used to pay for incontinence products, nutritional supplements, respite care, and other needed products and services. The new Level 2 background screening requirement is applicable to these family members who act as caregivers.

The bill amends the definition of direct service provider to include individuals who have direct, face-to-face contact with a client and have access to the client's living areas or to the client's funds or personal property. Current law defines a direct services provider as having client contact or living area/property access.

The bill creates an exemption from background screening for the following:

- Volunteers who assist on an intermittent basis for less than 20 hours of direct, face-to-face contact with a client per month.

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<sup>13</sup> See e.g. s. 394.4572(1)(a), F.S. (contact with persons held for mental health treatment) and s. 409.175(2), F.S. (contact with children).

<sup>14</sup> Meetings with Health and Human Services Committee staff in November and December of 2010, and correspondence on file with the Committee.

<sup>15</sup> Department of Elder Affairs, Summary of Programs and Services (2010).

- Individuals who are related by blood to the client.
- The client's spouse.
- Attorneys in good standing with the Florida Bar.

The bill provides an exemption from additional background screening for an individual who becomes a direct care provider and provides services within the scope of his or her license. The exemption applies to a person who was previously screened by the Agency for Health Care Administration as a condition of licensure. Such individuals would include owners, administrators, and employees of such entities as nursing homes, assisted living facilities, home health agencies, and adult day care establishments.<sup>16</sup>

The bill provides time frames for screenings by DOEA:

- Individuals serving as direct service providers on July 31, 2011, must be screened by July 1, 2013.
- DOEA may adopt rules to establish a schedule to stagger the implementation of the required screenings over a 1-year period, beginning July 1, 2012, through July 1, 2013.
- Individuals shall be rescreened every 5 years following the date of his or her last background screening unless the individual's fingerprints are continuously retained and monitored by FDLE in the federal fingerprint retention program.

The bill removes "any authorizing statutes, if the offense was a felony" for the list of disqualifying offenses for direct services providers. The term "authorizing statute" is not defined by Chapter 430, F.S. The term is defined in s. 408.803, F.S., and relates to entities regulated by the Agency for Health Care Administration. Its inclusion in s. 430.0402, F.S., appears to be a scrivener's error.

#### Employment Prior to Screening

Currently an employer may not "hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening" until the person has successfully completed the background screening.<sup>17</sup> The language creates uncertainty whether a person can be hired for the purpose of training and orientation prior to successfully completing the background screening.

The bill provides that an employer may hire an employee to a position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is successfully completed.

#### Electronic Screening Vendors

By July 1, 2012, all fingerprints submitted to FDLE must be submitted electronically.<sup>18</sup> An agency may by rule require fingerprints to be submitted electronically prior to that date.<sup>19</sup> An agency may contract with one or more vendors to perform all or part of the electronic fingerprinting and must ensure that each vendor is qualified and will ensure the integrity and security of all personal information.<sup>20</sup>

The bill requires vendors that do electronic fingerprinting to:

- Meet certain technical standards that are compatible with technology used by FDLE; and
- Have the ability to communicate electronically with the relevant state agency.

FDLE is directed to retain the fingerprints of any person who is screened on or after July 1, 2014.

<sup>16</sup> For a complete list of entities see s. 408.802, F.S.

<sup>17</sup> S. 435.06(2)(a), F.S.

<sup>18</sup> S. 435.04(1)(b), F.S.

<sup>19</sup> S. 435.04(1)(d), F.S.

<sup>20</sup> S. 435.04(1)(c), F.S.

## Exemptions from Disqualification; Qualified Entities

A person disqualified for offenses revealed pursuant to background screening under ch. 435, F.S., may be eligible for an exemption from disqualification. The head of the appropriate agency may grant an exemption from disqualification for:

- Felonies for which at least 3 years have elapsed since the completion of confinement, supervision, or sanction for the disqualifying felony;
- Misdemeanors for which the applicant has completed or been lawfully released from confinement, supervision, or sanction;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant has been lawfully released from confinement, supervision, or sanction; or
- Certain findings of delinquency.<sup>21</sup>

The applicant must demonstrate by clear and convincing evidence that the applicant should not be disqualified.<sup>22</sup> Disqualification may not be removed for certain serious offenses.<sup>23</sup>

A “qualified entity” is a business or organization that provides care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.<sup>24</sup> Qualified entities that register with FDLE may screen personnel and employees through the submission of fingerprints. Each request must be voluntary and conform to the requirements of the National Child Protection Act of 1993, as amended.<sup>25</sup>

The bill allows personnel employed by qualified entities to apply for exemptions from disqualification under ch. 435, F.S.

## Certified Nursing Assistants

Certified Nursing Assistants (CNAs) provide care and assistance to persons with their activities of daily living.<sup>26</sup> To become a CNA an individual must:

- Demonstrate a minimum competency to read and write.
- Successfully pass the Level 2 background screening described in s. 400.215, F.S.<sup>27</sup>
- Meet one of the following requirements:
  - Successfully complete an approved training program and examination.
  - Achieve a minimum score, on the nursing assistant competency examination, be 18 years old, and have a high school degree or the equivalent.

Only CNAs may be employed in nursing homes to provide nursing assistance.<sup>28</sup> However, there are limited exceptions for a person to begin working as a CNA for up to four months prior to certification when the person is enrolled in a CNA program, is a CNA in another state, or has preliminarily passed the CNA exam.<sup>29</sup> Such individuals must be background screened pursuant to s. 400.215, F.S., before beginning work as a CNA in a nursing home.

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<sup>21</sup> S. 435.07, F.S.

<sup>22</sup> S. 435.07(3)(a), F.S.

<sup>23</sup> S. 435.07(4), F.S.

<sup>24</sup> S. 943.0542(1), F.S.

<sup>25</sup> S. 943.0542(2), F.S.

<sup>26</sup> S. 464.201(5), F.S.

<sup>27</sup> The background screening required by s. 400.215, F.S., refers to the screening described in s. 408.809, F.S., and is identical to the background screening required by s. 430.0402, F.S., except that the following are also disqualifying offenses: s. 741.28, F.S., relating to domestic violence, s. 831.30, F.S., relating to fraud in obtaining medicinal drugs, and s. 831.31, F.S., relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

<sup>28</sup> S. 400.211, F.S.

<sup>29</sup> *Id.*

The bill provides that if an applicant for CNA certification has successfully passed the background screening required by s. 400.215, F.S., or s. 408.809, F.S., within 90 days of applying for the certification, the Board of Nursing shall waive the requirement that the applicant pass another background screening.

#### Statewide Interagency Background Screening Workgroup

The bill requires AHCA, FDLE, DOEA, the Department of Children and Family Services, the Department of Health, and the Agency for Persons with Disabilities to create the Statewide Interagency Background Screening Workgroup. The workgroup shall develop a work plan for implementing a statewide system for streamlining background screening processes and sharing background screening information.

The work plan is to be submitted to Speaker of the House of Representatives and the President of the Senate by November 1, 2012.

The creation of the workgroup was included in CS/SB 1992, which passed both chambers of the legislature during the 2011 legislative session. However, the bill was vetoed by the Governor. As a result, the creation of the workgroup was not statutorily required. However, the Governor issued an Executive Order to provide for the creation of a statewide interagency background screening workgroup.<sup>30</sup> The workgroup was charged with the same goals articulated in this bill. The workgroup has since completed their report and submitted their recommendations to the Governor.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 394.4572, F.S., relating to screening of mental health personnel.
- Section 2:** Amends s. 409.1757, F.S., relating to persons not required to be fingerprinted or rescreened.
- Section 3:** Amends s. 430.0402, F.S., relating to screening of direct service providers.
- Section 4:** Amends s. 435.04, F.S., relating to Level 2 screening standards.
- Section 5:** Amends s. 435.06, F.S., relating to exclusion from employment.
- Section 6:** Amends s. 435.07, F.S., relating to exemptions from disqualification.
- Section 7:** Amends s. 408.809, F.S., relating to background screening; prohibited offenses.
- Section 8:** Amends s. 464.203, F.S., relating to certified nursing assistants; certification requirements.
- Section 9:** Provides for certain agencies to create a statewide interagency background screening workgroup for the purpose of developing a work plan for implementing a statewide system for streamlining background screening processes and sharing background screening information.
- Section 10:** Provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

- 1. Revenues:  
None.
- 2. Expenditures:  
None.

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

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<sup>30</sup> Executive Office of the Governor of Florida, the Honorable Rick Scott, Letter to Secretary of State Kurt S. Browning regarding Veto of CS/SB 1992, June 23, 2011. (on file with subcommittee staff)

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the number of persons who will need to undergo background screening prior to working with vulnerable persons. The Level 2 screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).<sup>31</sup>

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:

The Department of Elderly Affairs is given rule-making authority to establish a schedule to stagger the implementation of the required background screenings over a 1-year period, beginning July 1, 2012, through July 1, 2013.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>31</sup> See note 4, supra.



29 of background screening; amending s. 435.04, F.S.;

30 requiring vendors who submit fingerprints on behalf of

31 employers to meet specified criteria; requiring that

32 fingerprints be retained for any person screened by a

33 certain date; amending s. 435.06, F.S.; authorizing an

34 employer to hire an employee to a position that

35 otherwise requires background screening before the

36 completion of the screening process for the purpose of

37 training the employee; prohibiting the employee from

38 having direct contact with vulnerable persons until

39 the screening process is complete; amending s. 435.07,

40 F.S.; providing that personnel of a qualified entity

41 as defined in ch. 943, F.S., may apply for an

42 exemption from screening; amending s. 408.809, F.S.;

43 eliminating a rule that requires the Agency for Health

44 Care Administration to stagger rescreening schedules;

45 providing a rescreening schedule; amending s. 464.203,

46 F.S.; requiring the Board of Nursing to waive

47 background screening requirements for certain

48 certified nursing assistants; requiring the

49 establishment of a statewide interagency workgroup

50 relating to statewide background screening procedures

51 and information sharing; providing for membership;

52 requiring the workgroup to submit a report to the

53 Legislature by a specified date; setting forth the

54 topics that, at a minimum, the workgroup must address

55 in its work plan; providing an effective date.

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

58

59 Section 1. Paragraph (d) is added to subsection (1) of  
60 section 394.4572, Florida Statutes, to read:

61 394.4572 Screening of mental health personnel.—

62 (1)

63 (d) Mental health personnel working in a facility licensed  
64 under chapter 395 who work on an intermittent basis for less  
65 than 15 hours per week of direct, face-to-face contact with  
66 patients are exempt from the fingerprinting and screening  
67 requirements, except that persons working in a mental health  
68 facility where the primary purpose of the facility is the mental  
69 health treatment of minors must be fingerprinted and meet  
70 screening requirements.

71 Section 2. Section 409.1757, Florida Statutes, is amended  
72 to read:

73 409.1757 Persons not required to be refingerprinted or  
74 rescreened.—Any ~~provision of~~ law to the contrary  
75 notwithstanding, human resource personnel who have been  
76 fingerprinted or screened pursuant to chapters 393, 394, 397,  
77 402, and this chapter, ~~and~~ teachers who have been fingerprinted  
78 pursuant to chapter 1012, and law enforcement officers who meet  
79 the requirements of s. 943.13, who have not been unemployed for  
80 more than 90 days thereafter, and who under the penalty of  
81 perjury attest to the completion of such fingerprinting or  
82 screening and to compliance with ~~the provisions of~~ this section  
83 and the standards for good moral character as contained in such  
84 provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451,

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85 402.305(2), ~~and~~ 409.175(6), and 943.13(7), are ~~shall not be~~  
 86 required to be refingerprinted or rescreened in order to comply  
 87 with any caretaker screening or fingerprinting requirements.

88 Section 3. Section 430.0402, Florida Statutes, is amended  
 89 to read:

90 430.0402 Screening of direct service providers.—

91 (1)(a) Level 2 background screening pursuant to chapter  
 92 435 is required for direct service providers. Background  
 93 screening includes employment history checks as provided in s.  
 94 435.03(1) and local criminal records checks through local law  
 95 enforcement agencies.

96 (b) For purposes of this section, the term "direct service  
 97 provider" means a person 18 years of age or older, including a  
 98 volunteer, who, pursuant to a program to provide services to the  
 99 elderly, has direct, face-to-face contact with a client while  
 100 providing services to the client and ~~or~~ has access to the  
 101 client's living areas or to the client's funds or personal  
 102 property. The term does not include ~~includes coordinators,~~  
 103 ~~managers, and supervisors of residential facilities and~~  
 104 volunteers who assist on an intermittent basis for less than 20  
 105 hours of direct, face-to-face contact with a client per month,  
 106 individuals who are related by blood to the client, or the  
 107 client's spouse.

108 (2) Licensed physicians or, nurses, ~~or~~ other professionals  
 109 licensed by the Department of Health, or attorneys in good  
 110 standing with The Florida Bar are not subject to background  
 111 screening if they are providing a service that is within the  
 112 scope of their licensed practice.

113 (3) Individuals qualified for employment by the Agency for  
 114 Health Care Administration pursuant to the agency's background  
 115 screening standards for licensure or employment contained in s.  
 116 408.809 are not subject to subsequent or additional Level 2  
 117 screening pursuant to chapter 435, or to the unique screening  
 118 requirements of this section, by virtue of their employment as a  
 119 direct service provider if they are providing a service that is  
 120 within the scope of their licensed practice.

121 (4)~~(3)~~ Refusal on the part of an employer to dismiss a  
 122 manager, supervisor, or direct service provider who has been  
 123 found to be in noncompliance with standards of this section  
 124 shall result in the automatic denial, termination, or revocation  
 125 of the license or certification, rate agreement, purchase order,  
 126 or contract, in addition to any other remedies authorized by  
 127 law.

128 (5) Individuals serving as direct service providers on  
 129 July 31, 2011, must be screened by July 1, 2013. The department  
 130 may adopt rules to establish a schedule to stagger the  
 131 implementation of the required screening over a 1-year period,  
 132 beginning July 1, 2012, through July 1, 2013.

133 (6) An employer of a direct service provider who  
 134 previously qualified for employment or volunteer work under  
 135 Level 1 screening standards or an individual who is required to  
 136 be screened according to the Level 2 screening standards  
 137 contained in chapter 435, pursuant to this section, shall be  
 138 rescreened every 5 years following the date of his or her last  
 139 background screening or exemption, unless such individual's  
 140 fingerprints are continuously retained and monitored by the

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141 Department of Law Enforcement in the federal fingerprint  
 142 retention program according to the procedures specified in s.  
 143 943.05.

144 (7)~~(4)~~ The background screening conducted pursuant to this  
 145 section must ensure that, in addition to the disqualifying  
 146 offenses listed in s. 435.04, no person subject to the  
 147 provisions of this section has an arrest awaiting final  
 148 disposition for, has been found guilty of, regardless of  
 149 adjudication, or entered a plea of nolo contendere or guilty to,  
 150 or has been adjudicated delinquent and the record has not been  
 151 sealed or expunged for, any offense prohibited under any of the  
 152 following provisions of state law or similar law of another  
 153 jurisdiction:

154 ~~(a) Any authorizing statutes, if the offense was a felony.~~

155 (a)~~(b)~~ Section 409.920, relating to Medicaid provider  
 156 fraud.

157 (b)~~(c)~~ Section 409.9201, relating to Medicaid fraud.

158 (c)~~(d)~~ Section 817.034, relating to fraudulent acts  
 159 through mail, wire, radio, electromagnetic, photoelectronic, or  
 160 photooptical systems.

161 (d)~~(e)~~ Section 817.234, relating to false and fraudulent  
 162 insurance claims.

163 (e)~~(f)~~ Section 817.505, relating to patient brokering.

164 (f)~~(g)~~ Section 817.568, relating to criminal use of  
 165 personal identification information.

166 (g)~~(h)~~ Section 817.60, relating to obtaining a credit card  
 167 through fraudulent means.

168 (h)~~(i)~~ Section 817.61, relating to fraudulent use of

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169 credit cards, if the offense was a felony.

170 ~~(i)-(j)~~ Section 831.01, relating to forgery.

171 ~~(j)-(k)~~ Section 831.02, relating to uttering forged  
172 instruments.

173 ~~(k)-(l)~~ Section 831.07, relating to forging bank bills,  
174 checks, drafts, or promissory notes.

175 ~~(l)-(m)~~ Section 831.09, relating to uttering forged bank  
176 bills, checks, drafts, or promissory notes.

177 Section 4. Paragraph (e) is added to subsection (1) of  
178 section 435.04, Florida Statutes, and subsection (4) is added to  
179 that section, to read:

180 435.04 Level 2 screening standards.—

181 (1)

182 (e) Vendors who submit fingerprints on behalf of employers  
183 must:

184 1. Use technology that is compliant with systems used by  
185 the Department of Law Enforcement; and

186 2. Have the ability to communicate electronically with the  
187 state agency accepting screening results from the Department of  
188 Law Enforcement.

189 (4) Fingerprints required for screening under this section  
190 shall be retained for any person who is screened on or after  
191 July 1, 2014.

192 Section 5. Paragraph (d) is added to subsection (2) of  
193 section 435.06, Florida Statutes, to read:

194 435.06 Exclusion from employment.—

195 (2)

196 (d) An employer may hire an employee to a position that

197 requires background screening before the employee completes the  
 198 screening process for training and orientation purposes.  
 199 However, the employee may not have direct contact with  
 200 vulnerable persons until the screening process is completed and  
 201 the employee demonstrates that he or she exhibits no behaviors  
 202 that warrant the denial or termination of employment.

203 Section 6. Subsection (6) is added to section 435.07,  
 204 Florida Statutes, to read:

205 435.07 Exemptions from disqualification.—Unless otherwise  
 206 provided by law, the provisions of this section apply to  
 207 exemptions from disqualification for disqualifying offenses  
 208 revealed pursuant to background screenings required under this  
 209 chapter, regardless of whether those disqualifying offenses are  
 210 listed in this chapter or other laws.

211 (6) Personnel of a qualified entity as described in s.  
 212 943.0542, who are required to be screened pursuant to s. 435.04,  
 213 may apply for an exemption pursuant to this chapter.

214 Section 7. Section 408.809, Florida Statutes, is amended  
 215 to read:

216 408.809 Background screening; prohibited offenses.—

217 (1) Level 2 background screening pursuant to chapter 435  
 218 must be conducted through the agency on each of the following  
 219 persons, who are considered employees for the purposes of  
 220 conducting screening under chapter 435:

- 221 (a) The licensee, if an individual.
- 222 (b) The administrator or a similarly titled person who is
- 223 responsible for the day-to-day operation of the provider.
- 224 (c) The financial officer or similarly titled individual

225 who is responsible for the financial operation of the licensee  
 226 or provider.

227 (d) Any person who is a controlling interest if the agency  
 228 has reason to believe that such person has been convicted of any  
 229 offense prohibited by s. 435.04. For each controlling interest  
 230 who has been convicted of any such offense, the licensee shall  
 231 submit to the agency a description and explanation of the  
 232 conviction at the time of license application.

233 (e) Any person, as required by authorizing statutes,  
 234 seeking employment with a licensee or provider who is expected  
 235 to, or whose responsibilities may require him or her to, provide  
 236 personal care or services directly to clients or have access to  
 237 client funds, personal property, or living areas; and any  
 238 person, as required by authorizing statutes, contracting with a  
 239 licensee or provider whose responsibilities require him or her  
 240 to provide personal care or personal services directly to  
 241 clients. Evidence of contractor screening may be retained by the  
 242 contractor's employer or the licensee.

243 (2) Every 5 years following his or her licensure,  
 244 employment, or entry into a contract in a capacity that under  
 245 subsection (1) would require level 2 background screening under  
 246 chapter 435, each such person must submit to level 2 background  
 247 rescreening as a condition of retaining such license or  
 248 continuing in such employment or contractual status. For any  
 249 such rescreening, the agency shall request the Department of Law  
 250 Enforcement to forward the person's fingerprints to the Federal  
 251 Bureau of Investigation for a national criminal history record  
 252 check. If the fingerprints of such a person are not retained by

253 the Department of Law Enforcement under s. 943.05(2)(g), the  
 254 person must file a complete set of fingerprints with the agency  
 255 and the agency shall forward the fingerprints to the Department  
 256 of Law Enforcement for state processing, and the Department of  
 257 Law Enforcement shall forward the fingerprints to the Federal  
 258 Bureau of Investigation for a national criminal history record  
 259 check. The fingerprints may be retained by the Department of Law  
 260 Enforcement under s. 943.05(2)(g). The cost of the state and  
 261 national criminal history records checks required by level 2  
 262 screening may be borne by the licensee or the person  
 263 fingerprinted. Proof of compliance with level 2 screening  
 264 standards submitted within the previous 5 years to meet any  
 265 provider or professional licensure requirements of the agency,  
 266 the Department of Health, the Agency for Persons with  
 267 Disabilities, the Department of Children and Family Services, or  
 268 the Department of Financial Services for an applicant for a  
 269 certificate of authority or provisional certificate of authority  
 270 to operate a continuing care retirement community under chapter  
 271 651 satisfies the requirements of this section if the person  
 272 subject to screening has not been unemployed for more than 90  
 273 days and such proof is accompanied, under penalty of perjury, by  
 274 an affidavit of compliance with the provisions of chapter 435  
 275 and this section using forms provided by the agency.

276 (3) All fingerprints must be provided in electronic  
 277 format. Screening results shall be reviewed by the agency with  
 278 respect to the offenses specified in s. 435.04 and this section,  
 279 and the qualifying or disqualifying status of the person named  
 280 in the request shall be maintained in a database. The qualifying

281 or disqualifying status of the person named in the request shall  
 282 be posted on a secure website for retrieval by the licensee or  
 283 designated agent on the licensee's behalf.

284 (4) In addition to the offenses listed in s. 435.04, all  
 285 persons required to undergo background screening pursuant to  
 286 this part or authorizing statutes must not have an arrest  
 287 awaiting final disposition for, must not have been found guilty  
 288 of, regardless of adjudication, or entered a plea of nolo  
 289 contendere or guilty to, and must not have been adjudicated  
 290 delinquent and the record not have been sealed or expunged for  
 291 any of the following offenses or any similar offense of another  
 292 jurisdiction:

293 (a) Any authorizing statutes, if the offense was a felony.

294 (b) This chapter, if the offense was a felony.

295 (c) Section 409.920, relating to Medicaid provider fraud.

296 (d) Section 409.9201, relating to Medicaid fraud.

297 (e) Section 741.28, relating to domestic violence.

298 (f) Section 817.034, relating to fraudulent acts through  
 299 mail, wire, radio, electromagnetic, photoelectronic, or  
 300 photooptical systems.

301 (g) Section 817.234, relating to false and fraudulent  
 302 insurance claims.

303 (h) Section 817.505, relating to patient brokering.

304 (i) Section 817.568, relating to criminal use of personal  
 305 identification information.

306 (j) Section 817.60, relating to obtaining a credit card  
 307 through fraudulent means.

308 (k) Section 817.61, relating to fraudulent use of credit

309 cards, if the offense was a felony.

310 (l) Section 831.01, relating to forgery.

311 (m) Section 831.02, relating to uttering forged  
312 instruments.

313 (n) Section 831.07, relating to forging bank bills,  
314 checks, drafts, or promissory notes.

315 (o) Section 831.09, relating to uttering forged bank  
316 bills, checks, drafts, or promissory notes.

317 (p) Section 831.30, relating to fraud in obtaining  
318 medicinal drugs.

319 (q) Section 831.31, relating to the sale, manufacture,  
320 delivery, or possession with the intent to sell, manufacture, or  
321 deliver any counterfeit controlled substance, if the offense was  
322 a felony.

323 (5) A person who serves as a controlling interest of, is  
324 employed by, or contracts with a licensee on July 31, 2010, who  
325 has been screened and qualified according to standards specified  
326 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in  
327 compliance with the following schedule. ~~The agency may adopt~~  
328 ~~rules to establish a schedule to stagger the implementation of~~  
329 ~~the required rescreening over the 5-year period, beginning July~~  
330 ~~31, 2010, through July 31, 2015.~~ If, upon rescreening, such  
331 person has a disqualifying offense that was not a disqualifying  
332 offense at the time of the last screening, but is a current  
333 disqualifying offense and was committed before the last  
334 screening, he or she may apply for an exemption from the  
335 appropriate licensing agency and, if agreed to by the employer,  
336 may continue to perform his or her duties until the licensing

337 agency renders a decision on the application for exemption if  
 338 the person is eligible to apply for an exemption and the  
 339 exemption request is received by the agency within 30 days after  
 340 receipt of the rescreening results by the person. The  
 341 rescreening schedule shall be:

342 (a) Individuals for whom the last screening was conducted  
 343 on or before December 31, 2004, must be rescreened by July 31,  
 344 2014.

345 (b) Individuals for whom the last screening conducted was  
 346 between January 1, 2005, and December 31, 2008, must be  
 347 rescreened by July 31, 2015.

348 (c) Individuals for whom the last screening conducted was  
 349 between January 1, 2009, through July 31, 2011, must be  
 350 rescreened by July 31, 2016.

351 ~~(6)~~~~(5)~~ The costs associated with obtaining the required  
 352 screening must be borne by the licensee or the person subject to  
 353 screening. Licensees may reimburse persons for these costs. The  
 354 Department of Law Enforcement shall charge the agency for  
 355 screening pursuant to s. 943.053(3). The agency shall establish  
 356 a schedule of fees to cover the costs of screening.

357 ~~(7)~~~~(6)~~(a) As provided in chapter 435, the agency may grant  
 358 an exemption from disqualification to a person who is subject to  
 359 this section and who:

360 1. Does not have an active professional license or  
 361 certification from the Department of Health; or

362 2. Has an active professional license or certification  
 363 from the Department of Health but is not providing a service  
 364 within the scope of that license or certification.

365 (b) As provided in chapter 435, the appropriate regulatory  
 366 board within the Department of Health, or the department itself  
 367 if there is no board, may grant an exemption from  
 368 disqualification to a person who is subject to this section and  
 369 who has received a professional license or certification from  
 370 the Department of Health or a regulatory board within that  
 371 department and that person is providing a service within the  
 372 scope of his or her licensed or certified practice.

373 (8)~~(7)~~ The agency and the Department of Health may adopt  
 374 rules pursuant to ss. 120.536(1) and 120.54 to implement this  
 375 section, chapter 435, and authorizing statutes requiring  
 376 background screening and to implement and adopt criteria  
 377 relating to retaining fingerprints pursuant to s. 943.05(2).

378 (9)~~(8)~~ There is no unemployment compensation or other  
 379 monetary liability on the part of, and no cause of action for  
 380 damages arising against, an employer that, upon notice of a  
 381 disqualifying offense listed under chapter 435 or this section,  
 382 terminates the person against whom the report was issued,  
 383 whether or not that person has filed for an exemption with the  
 384 Department of Health or the agency.

385 Section 8. Subsection (1) of section 464.203, Florida  
 386 Statutes, is amended to read:

387 464.203 Certified nursing assistants; certification  
 388 requirement.—

389 (1) The board shall issue a certificate to practice as a  
 390 certified nursing assistant to any person who demonstrates a  
 391 minimum competency to read and write and successfully passes the  
 392 required background screening pursuant to s. 400.215. If the

393 person has successfully passed the required background screening  
 394 pursuant to s. 400.215 or s. 408.809 within 90 days before  
 395 applying for a certificate to practice, the board shall waive  
 396 the requirement that the applicant successfully pass an  
 397 additional background screening pursuant to s. 400.215. The  
 398 person must also meet ~~and meets~~ one of the following  
 399 requirements:

400 (a) Has successfully completed an approved training  
 401 program and achieved a minimum score, established by rule of the  
 402 board, on the nursing assistant competency examination, which  
 403 consists of a written portion and skills-demonstration portion  
 404 approved by the board and administered at a site and by  
 405 personnel approved by the department.

406 (b) Has achieved a minimum score, established by rule of  
 407 the board, on the nursing assistant competency examination,  
 408 which consists of a written portion and skills-demonstration  
 409 portion, approved by the board and administered at a site and by  
 410 personnel approved by the department and:

- 411 1. Has a high school diploma, or its equivalent; or
- 412 2. Is at least 18 years of age.

413 (c) Is currently certified in another state; is listed on  
 414 that state's certified nursing assistant registry; and has not  
 415 been found to have committed abuse, neglect, or exploitation in  
 416 that state.

417 (d) Has completed the curriculum developed by the  
 418 Department of Education and achieved a minimum score,  
 419 established by rule of the board, on the nursing assistant  
 420 competency examination, which consists of a written portion and

421 skills-demonstration portion, approved by the board and  
 422 administered at a site and by personnel approved by the  
 423 department.

424 Section 9. The Department of Children and Family Services,  
 425 the Agency for Health Care Administration, the Department of  
 426 Elderly Affairs, the Department of Health, the Agency for  
 427 Persons with Disabilities, the Department of Juvenile Justice,  
 428 and the Department of Law Enforcement shall create a statewide  
 429 interagency background screening workgroup for the purpose of  
 430 developing a work plan for implementing a statewide system for  
 431 streamlining background screening processes and sharing  
 432 background screening information.

433 (1) The interagency workgroup shall be coordinated through  
 434 the Agency for Health Care Administration and shall include  
 435 representatives from each of the state agencies required to  
 436 create the workgroup.

437 (2) The interagency workgroup shall submit a work plan for  
 438 implementing a streamlined background screening system to the  
 439 President of the Senate and the Speaker of the House of  
 440 Representatives by November 1, 2012.

441 (3) The interagency workgroup work plan shall, at a  
 442 minimum, address the following:

443 (a) The feasibility of creating a single statewide  
 444 database that is accessible by all agencies participating on the  
 445 workgroup.

446 (b) The feasibility of collocating or consolidating  
 447 current screening processes.

448 (c) Standardized screening criteria.

- 449        (d) Consistent criminal history information.
- 450        (e) Centralized exemptions.
- 451        (f) State and national retention of prints.
- 452        (g) National rescreens.
- 453        (h) Responsibility for retained prints and resubmission.
- 454        (i) Access to information.
- 455        (j) Fees.
- 456        (k) Screening turnaround time.
- 457        (l) The need for cooperative agreements among agencies  
458 that may access information.
- 459        (m) Legal considerations and the need for legislative  
460 action necessary for accessing information by participating  
461 agencies.
- 462        (n) Guidelines for how the information shall be accessed,  
463 used, and disseminated.
- 464        (o) The organizational level at which information may be  
465 accessed and shared.
- 466        (p) The specific information to be maintained and shared  
467 through the system.
- 468        (q) Registration of employee information regarding the  
469 employment status of persons screened, including date of hire  
470 and date of separation, to facilitate notifications of arrests  
471 and dispositions to the appropriate provider.
- 472        (r) The costs of implementing the streamlined system to  
473 the state, employers, employees, and volunteers.
- 474        Section 10. This act shall take effect July 1, 2012.

Amendment No. **1**

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services  
 2 Access Subcommittee  
 3 Representative Holder offered the following:

**Amendment (with title amendment)**

6 Remove lines 91-112 and insert:

7 (1) (a) Except as provided in subsection (2), level 2  
 8 background screening pursuant to chapter 435 is required for  
 9 direct service providers. Background screening includes  
 10 employment history checks as provided in s. 435.03(1) and local  
 11 criminal records checks through local law enforcement agencies.

12 (b) For purposes of this section, the term "direct service  
 13 provider" means a person 18 years of age or older who, pursuant  
 14 to a program to provide services to the elderly, has direct,  
 15 face-to-face contact with a client while providing services to  
 16 the client and ~~or~~ has access to the client's living areas, ~~or to~~  
 17 ~~the client's funds, or personal property,~~ or personal  
 18 identification information as defined in s. 817.568. The term

Amendment No.

19 includes coordinators, managers, and supervisors of residential  
20 facilities and volunteers.

21 (2) Level 2 background screening pursuant to chapter 435  
22 is not required for the following direct service providers:

23 (a) Licensed physicians, nurses, or other professionals  
24 licensed by the Department of Health or attorneys in good  
25 standing with The Florida Bar are not subject to background  
26 screening if they are providing a service that is within the  
27 scope of their licensed practice.

28 (b) Relatives. For the purposes of this section, the term  
29 "relative" means an individual who is the father, mother,  
30 stepfather, stepmother, son, daughter, brother, sister,  
31 grandmother, grandfather, great-grandmother, great-grandfather,  
32 grandson, granddaughter, uncle, aunt, first cousin, nephew,  
33 niece, husband, wife, father-in-law, mother-in-law, son-in-law,  
34 daughter-in-law, brother-in-law, sister-in-law, stepson,  
35 stepdaughter, stepbrother, stepsister, half brother, or half  
36 sister of the client.

37 (c) Volunteers who assist on an intermittent basis for  
38 less than 20 hours per month and who are not listed on the  
39 Department of Law Enforcement Career Offender Search or the Dru  
40 Sjodin National Sex Offender Public Website (NSOPW). The  
41 program that provides services to the elderly is responsible for  
42 verifying the volunteer is not listed on the databases.

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**T I T L E   A M E N D M E N T**

Remove lines 13-17 and insert:

F.S., including a person who has access to a clients personal  
identification information within the definition of "direct  
service provider"; exempting attorney's in good standing,  
relatives of clients, and volunteers who assist on an  
intermittent basis for less than 20 hours per month from level 2  
background screening; excepting

Amendment No. **2**

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services  
 2 Access Subcommittee  
 3 Representative Holder offered the following:

**Amendment**

6 Remove lines 342-350 and insert:

7 (a) Individuals for whom the last screening was conducted  
 8 on or before December 31, 2004 must be rescreened by July 31,  
 9 2013.

10 (b) Individuals for whom the last screening conducted was  
 11 between January 1, 2005, and December 31, 2008, must be  
 12 rescreened by July 31, 2014.

13 (c) Individuals for whom the last screening conducted was  
 14 between January 1, 2009, through July 31, 2011, must be  
 15 rescreened by July 31, 2015.

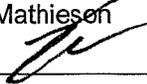


HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1097 Sexually Violent Predators

SPONSOR(S): Kreegel

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Mathieson 	Schoolfield 
2) Criminal Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends part V of chapter 394, F.S., relating to involuntary civil commitment of sexually violent predators. The bill:

- Amends the definition of sexually violent predator, to include only felony offenses for referral to the program;
- Amends the referral process, to allow prioritization by release date from incarceration, rather than by date of referral;
- Clarifies timeframes for the review of referrals by the multidisciplinary team at the Department of Children and Families (DCF), and for the filing of a petition by the state attorney;
- Removes language related to deportation detainees by U.S. Bureau of Citizenship and Immigration Services which will allow these detainees to be addressed if possible prior to commitment to the Sexually Violent Predator Program; and
- Criminalizes the introduction or removal of certain articles (e.g. firearms, controlled substances) to a facility which confines or treats persons in the sexually violent predator program (SVPP).

The bill appears to have no fiscal impact.

The bill provides for an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

As defined by Florida Statute, sexually violent predators are persons who have been convicted of a sexually violent offence, and have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.<sup>1</sup>

The Legislature has addressed this issue by creating a civil commitment process for sexually violent predators, to involuntarily commit and treat mentally ill people, and a treatment program called the Sexually Violent Predator Program (SVPP).<sup>2</sup> Offenders with specified sex offences are referred to the Department of Children and Families (DCF) by either the Department of Corrections (DOC) or the Department of Juvenile Justice (DJJ), for an assessment as to whether they meet the definition of a sexually violent predator. The Office of Economic and Demographic Research (EDR) of the Florida Legislature report that as of December 31, 2011, there had been 42,777 referrals since the program's inception.<sup>3</sup>

The screening is done by a multidisciplinary team within DCF,<sup>4</sup> and then a recommendation is made to the State Attorney. Following the recommendation and supporting information, the State Attorney determines whether to file a petition with the circuit court. If the judge finds probable cause, then the person is to be held at a secure facility which is the Florida Civil Commitment Center (FCCC).<sup>5</sup>

Subsection 394.912(9), F.S., defines "sexually violent offense" for the purpose of determining what crimes may subject a person to civil commitment as a sexually violent predator. The determination that the crime was sexually motivated must be done at either the time of sentencing of the crime or at the civil commitment trial.<sup>6</sup>

After a probable cause determination by a judge, a trial is held within 30 days to ascertain whether the person is a sexually violent predator.<sup>7</sup> If a judge or jury finds by a standard of clear and convincing evidence, that the person is a sexually violent predator, then they will be civilly committed to the custody of DCF for control, care and treatment upon completion of their criminal sentence.<sup>8</sup>

The SVPP was the subject of a 2008 report by the Office of Program and Policy Analysis and Government Accountability (OPPAGA), which addressed issues around the waiting time for detainees at the facility during the civil commitment process and implementation of the contract with the private vendor.<sup>9</sup>

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<sup>1</sup> S. 394.912, F.S.

<sup>2</sup> See, ss. 394.910-932, F.S.

<sup>3</sup> See, <http://edr.state.fl.us/Content/resource-demand/criminal-justice/reports/sexually-violent-predators/index.cfm>, site last visited January 1, 2012.

<sup>4</sup> The multidisciplinary team is to include at least two licensed psychiatrists or psychologists, or a licensed psychiatrist and psychologist. S. 394.913(3)(b), F.S.

<sup>5</sup> The Florida Civil Commitment Center is a 720 bed secure facility in Acadia, FL, operated by the GEO group.

<sup>6</sup> S. 394.912(9), F.S.

<sup>7</sup> S. 394.916(1), F.S.

<sup>8</sup> S. 394.917(2), F.S.

<sup>9</sup> The Delays in Screening Sexually Violent Predators Increase Costs; Treatment Facility Security Enhanced, Office of Program Policy Analysis and Government Accountability, February 2008, Report 08-10.

## Effect of proposed changes

House bill 1097 amends the definition of “sexually violent predator,” so that it only allows for referral of felony criminal acts that are sexually motivated. Currently, misdemeanor crimes that are sexually motivated could trigger a referral to DCF for review.

The bill amends the referral process for civil commitment to allow DCF to prioritize referrals for screening based on the release date of the person. Currently, the law directs DCF to prioritize based on referral date from DOC and DJJ. DOC is directed to provide 545 days written notice of a person to be assessed for civil commitment, and DJJ 180 days to the SVPP. DCF has 180 days before the anticipated release date to make a recommendation to the State Attorney. In the 2008 OPPAGA report, it was noted that approximately one third of the people referred for the SVPP had sentences of less than 545 days.<sup>10</sup> This can cause delays in processing referrals, and the changes in this bill will give DCF sufficient time to process referrals prior to release dates.

The bill amends s. 394.9135, F.S., to clarify the timeframe for completing assessments and recommendations by the multidisciplinary team and the filing of civil commitment petitions by the state attorney. The bill specifies that if the timeframes for completing assessments, recommendations or petitions falls after 5 PM, then the document may be filed on the next working day. Currently, the law does not make a distinction if the statutory timeframe falls after 5 PM. Failure to complete these documents within statutory timeframes could result in an unintended release of a person under consideration for the SVP program.

The bill amends s. 394.917, F.S., to remove language related to deportation detainers by the US Bureau of Citizenship and Immigration Services.<sup>11</sup> Current law does not allow the court to consider these detainers upon completion of a person’s criminal sentence and prior to commitment to the SVP program. The bill would allow DCF and the state attorney to work with the federal government in deportation actions on undocumented aliens prior to them being committed to DCF custody.

The bill creates s. 394.9265, F.S., which criminalizes the introduction, or the attempt to introduce, the following contraband to any facility providing confinement and treatment under Part V of ch. 394, F.S.:

- any intoxicating beverage or beverage that causes or may cause an intoxicating effect;
- any controlled substance defined in ch. 893, F.S.;<sup>12</sup> or
- Any firearm or weapon;

This ban would prohibit introduction of contraband to the SVP civil commitment facility. A violation of this section is a third degree felony.<sup>13</sup>

### B. SECTION DIRECTORY:

- Section 1:** Amends s. 394.912, F.S., relating to definitions.
- Section 2:** Amends s. 394.913, F.S., relating to notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary teams; information to be provided to multidisciplinary teams.
- Section 3:** Amends s. 394.9135, F.S., relating to immediate releases from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold custody; filing petition after release.
- Section 4:** Amends s. 394.917, F.S., relating to determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellant cases.
- Section 5:** Creates s. 394.9265, F.S., relating to introduction or removal of certain articles unlawful; penalty.

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<sup>10</sup>*Id.*

<sup>11</sup> A detainer is the action of detaining, withholding or keeping something in one’s custody. Black’s Law Dictionary (8<sup>th</sup> Ed. 2006).

<sup>12</sup> Chapter 893, F.S., is the Drug Abuse and Control Act.

<sup>13</sup> A third degree felony is punishable by a fine not exceeding \$5,000 or a term of imprisonment not to exceed 5 years. If the offender is determined to be an habitual offender, the term of imprisonment is not to exceed 10 years. ss. 775.082, 775.083, 775.084, F.S.

**Section 6:** Provides for an effective date.

## 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:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 84 would be more clear if "pursuant to 394.9135(2)" was inserted after the word recommendation.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES



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28 items that constitute contraband; providing criminal  
 29 penalties for violations; providing an effective date.

30  
 31 Be It Enacted by the Legislature of the State of Florida:

32  
 33 Section 1. Paragraph (h) of subsection (9) of section  
 34 394.912, Florida Statutes, is amended to read:

35 394.912 Definitions.—As used in this part, the term:

36 (9) "Sexually violent offense" means:

37 (h) Any felony criminal act that, either at the time of  
 38 sentencing for the offense or subsequently during civil  
 39 commitment proceedings under this part, has been determined  
 40 beyond a reasonable doubt to have been sexually motivated.

41 Section 2. Subsection (1) of section 394.913, Florida  
 42 Statutes, is amended to read:

43 394.913 Notice to state attorney and multidisciplinary  
 44 team of release of sexually violent predator; establishing  
 45 multidisciplinary teams; information to be provided to  
 46 multidisciplinary teams.—

47 (1) The agency with jurisdiction over a person who has  
 48 been convicted of a sexually violent offense shall give written  
 49 notice to the multidisciplinary team, and a copy to the state  
 50 attorney of the circuit where that person was last convicted of  
 51 a sexually violent offense. If the person has never been  
 52 convicted of a sexually violent offense in this state but has  
 53 been convicted of a sexually violent offense in another state or  
 54 in federal court, the agency with jurisdiction shall give  
 55 written notice to the multidisciplinary team and a copy to the

56 | state attorney of the circuit where the person was last  
 57 | convicted of any offense in this state. If the person is being  
 58 | confined in this state pursuant to interstate compact and has a  
 59 | prior or current conviction for a sexually violent offense, the  
 60 | agency with jurisdiction shall give written notice to the  
 61 | multidisciplinary team and a copy to the state attorney of the  
 62 | circuit where the person plans to reside upon release or, if no  
 63 | residence in this state is planned, the state attorney in the  
 64 | circuit where the facility from which the person to be released  
 65 | is located.

66 |       (a) Except as provided in s. 394.9135, the written notice  
 67 | must be given:

68 |       1.~~(a)~~ At least 545 days prior to the anticipated release  
 69 | from total confinement of a person serving a sentence in the  
 70 | custody of the Department of Corrections, except that in the  
 71 | case of persons who are totally confined for a period of less  
 72 | than 545 days, written notice must be given as soon as  
 73 | practicable;

74 |       2.~~(b)~~ At least 180 days prior to the anticipated release  
 75 | from residential commitment of a person committed to the custody  
 76 | of the Department of Juvenile Justice, except that in the case  
 77 | of persons who are committed to low or moderate risk, written  
 78 | notice must be given as soon as practicable; or

79 |       3.~~(c)~~ At least 180 days prior to the anticipated hearing  
 80 | regarding possible release of a person committed to the custody  
 81 | of the department who has been found not guilty by reason of  
 82 | insanity or mental incapacity of a sexually violent offense.

83 (b) Notwithstanding paragraph (a), in the case of a person  
 84 for whom the written assessment and recommendation has not been  
 85 completed at least 365 days prior to his or her release from  
 86 total confinement, the department shall prioritize the  
 87 assessment of that person based upon the person's release date.

88 Section 3. Subsections (2) and (3) of section 394.9135,  
 89 Florida Statutes, are amended to read:

90 394.9135 Immediate releases from total confinement;  
 91 transfer of person to department; time limitations on  
 92 assessment, notification, and filing petition to hold in  
 93 custody; filing petition after release.—

94 (2) Within 72 hours after transfer, the multidisciplinary  
 95 team shall assess whether the person meets the definition of a  
 96 sexually violent predator. If the multidisciplinary team  
 97 determines that the person does not meet the definition of a  
 98 sexually violent predator, that person shall be immediately  
 99 released. If the multidisciplinary team determines that the  
 100 person meets the definition of a sexually violent predator, the  
 101 team shall provide the state attorney, as designated by s.  
 102 394.913, with its written assessment and recommendation within  
 103 the 72-hour period or, if the 72-hour period ends after 5 p.m.  
 104 on a working day or on a weekend or holiday, within the next  
 105 working day thereafter.

106 (3) Within 48 hours after receipt of the written  
 107 assessment and recommendation from the multidisciplinary team,  
 108 the state attorney, as designated in s. 394.913, may file a  
 109 petition with the circuit court alleging that the person is a  
 110 sexually violent predator and stating facts sufficient to

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111 support such allegation. If a petition is not filed within 48  
 112 hours after receipt of the written assessment and recommendation  
 113 by the state attorney, the person shall be immediately released,  
 114 except that, if the 48-hour period ends after 5 p.m. on a  
 115 working day or on a weekend or holiday, the petition may be  
 116 filed on the next working day without resulting in the person's  
 117 release. If a petition is filed pursuant to this section and the  
 118 judge determines that there is probable cause to believe that  
 119 the person is a sexually violent predator, the judge shall order  
 120 the person be maintained in custody and held in an appropriate  
 121 secure facility for further proceedings in accordance with this  
 122 part.

123 Section 4. Subsection (2) of section 394.917, Florida  
 124 Statutes, is amended to read:

125 394.917 Determination; commitment procedure; mistrials;  
 126 housing; counsel and costs in indigent appellate cases.—

127 (2) If the court or jury determines that the person is a  
 128 sexually violent predator, upon the expiration of the  
 129 incarcerative portion of all criminal sentences and disposition  
 130 of any detainers ~~other than detainers for deportation by the~~  
 131 ~~United States Bureau of Citizenship and Immigration Services,~~  
 132 the person shall be committed to the custody of the Department  
 133 of Children and Family Services for control, care, and treatment  
 134 until such time as the person's mental abnormality or  
 135 personality disorder has so changed that it is safe for the  
 136 person to be at large. At all times, persons who are detained or  
 137 committed under this part shall be kept in a secure facility  
 138 segregated from patients of the department who are not detained

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139 or committed under this part.

140 Section 5. Section 394.9265, Florida Statutes, is created  
141 to read:

142 394.9265 Introduction or removal of certain articles  
143 unlawful; penalty.—

144 (1) Except as authorized by law, it is unlawful to  
145 knowingly and intentionally bring into any facility providing  
146 secure confinement and treatment under this part, or to take or  
147 attempt to take or send therefrom, any of the following  
148 articles:

149 (a) Any intoxicating beverage or beverage that causes or  
150 may cause an intoxicating effect;

151 (b) Any controlled substance as defined in chapter 893; or

152 (c) Any firearm or weapon.

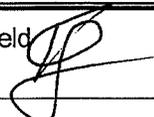
153 (2) A person who violates this section commits a felony of  
154 the third degree, punishable as provided in s. 775.082, s.  
155 775.083, or s. 775.084.

156 Section 6. This act shall take effect July 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1045 Mental Health  
**SPONSOR(S):** Schwartz  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Mathieson 	Schoolfield 
2) Criminal Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

House Bill 1045 makes changes to Chapter 916, F.S., Mentally Deficient and Mentally Ill Defendants and Section 985.19, F.S., Incompetency in Juvenile Delinquency Cases as follows:

- An admitting physician for a state forensic or civil facility may continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication.
- Court appointed mental health experts who conduct competency evaluations in both adult and juvenile settings, must complete training once every five years in order to conduct evaluations for the court and remain on the forensic evaluator registry.
- The bill establishes a 30 day time frame for a competency hearing after the court receives notification that the defendant no longer meets criteria for continued commitment.
- The timeframe for dismissal of charges for people determined to be non-restorable is reduced from five to two years, except for capital felonies.
- The bill establishes standards for the evaluation of competency and the mental condition of juveniles, under s. 985.19, F.S.

The bill does not appear to have a fiscal impact on the state.

The bill provides an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

The Department of Children and Families (DCF) serves individuals who have been adjudicated incompetent to proceed at trial due to mental illness or not guilty by reason of insanity and are committed to the department, pursuant to ch. 916, F.S. Competency restoration training and mental health services are provided in four state forensic facilities, with a total of 1,098 beds.<sup>1</sup> In FY 2010-11, DCF reported serving 2,581 adults as a result of a chapter 916, F.S., commitment.<sup>2</sup>

Chapter 985, F.S., relating to juvenile justice, provides DCF, the Agency for Persons with Disabilities (APD), and the Department of Juvenile Justice (DJJ) with delegated authority and legislative guidance as to delinquency and competency issues for juveniles. Court proceedings are stayed until an evaluation of the juvenile has occurred.<sup>3</sup> The evaluation of the juvenile's mental health must specifically state the basis for determinations of juvenile incompetency.<sup>4</sup> DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation or autism.<sup>5</sup> In FY 2010-11, DCF reported that it served 412 children who were adjudicated incompetent to proceed.

#### Competency Evaluation

Current law provides for adult competency evaluations that to the extent possible, the appointed experts shall have completed forensic evaluator training approved by the department, and each shall be a psychiatrist, licensed psychologist, or physician. The department shall maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.<sup>6</sup> However, current law does not require attendance at a department authorized training or training renewal.<sup>7</sup> In the juvenile system, the court appoints mental health experts to conduct competency evaluations. DCF provides the court a list of experts to choose from who have completed a department approved training.<sup>8</sup>

#### Competency Hearing

Currently, the Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.<sup>9</sup>

#### Dismissal of Charges following Competency Training

Currently, charges against an adult person adjudicated as incompetent to proceed due to mental illness may be dismissed after five years of incompetency.<sup>10</sup> This occurs unless the court makes findings that the person will become competent in the future.<sup>11</sup> Charges are dismissed without prejudice, so that the state may re-file if the person become competent in the future.<sup>12</sup>

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<sup>1</sup> DCF Analysis of HB 1045 dated January 5, 2012 on file with Health and Human Services Access Subcommittee staff.

<sup>2</sup> *Id.*

<sup>3</sup> S. 985.19(1), F.S.

<sup>4</sup> S. 985.19, F.S.

<sup>5</sup> S. 985.19(4), F.S.

<sup>6</sup> S. 916.115, (1)(a),(b),F.S.,

<sup>7</sup> S. 916.115, (1)(a),F.S.,

<sup>8</sup> S. 985.19(1)(d), F.S.

<sup>9</sup> 33.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure

<sup>10</sup> S. 916.145, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

## Psychotherapeutic Medication Treatment

Current law requires that forensic clients must give express and informed consent to treatment. If they refuse and the situation is deemed an emergency putting the client's safety at risk then treatment may be given for 48 hours. If the person still refuses to give consent then a court order must be sought for continuation of the treatment. In non-emergency situations the treatment may not be given (without consent) and a court order must be sought for continued treatment.<sup>13</sup> DCF reports that in the non-emergency situations the abrupt halt of medications to the individual can place the individual at risk for significant harm to their health and safety.<sup>14</sup>

## **Effect of Proposed changes**

### Continuation of Psychotherapeutic Medication

The bill provides that an admitting physician for a state forensic or civil facility may continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client. This authority is for non-emergency situations<sup>15</sup> and is limited to the time period required to obtain a court order for the medication. This provision would apply to all forensic clients since it appears in the general provisions of Chapter 916, F.S. Therefore, forensic clients who are either mentally ill, have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or the Agency for Persons with Disabilities. This provision would also apply to situations other than an emergency since current law provides a process for continued medication in emergencies.

The bill does not specify a timeframe for the pursuit of a court order or place any limits on the continuation of the medication while awaiting the order. Court ordered medication of an individual has been the subject of judicial review.<sup>16</sup>

### Competency Hearings

The bill provides that a competency hearing must be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. For defendants who have been adjudicated not guilty by reason of insanity, a competency hearing must be held within 30 days after the court has been notified the defendant no longer meets the criteria for continued commitment. The requirement for a hearing within 30 days is consistent with Rule 3.212(c)(6) Florida Rules of Criminal Procedure. This change should help ensure timely processing by the courts for persons who have completed competency training regimens in state facilities.

### Forensic Evaluator Training

The bill provides that mental health experts must complete a DCF approved evaluator training course that will be provided at least annually. The bill renames the DCF list of mental health experts as a registry of forensic evaluators, and completion of the department approved training is a condition of conducting evaluations for the court and being placed on the registry. Beginning July 1, 2013, the training must be completed every five years, and failure to do so will result in removal from the list. The court can only appoint forensic evaluators from the registry. The bill creates the same process for evaluators in the juvenile system.

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<sup>13</sup> S. 916.107(3), F.S.

<sup>14</sup> DCF Analysis of HB 1045 dated January 5, 2012 on file with Health and Human Services Access Subcommittee staff

<sup>15</sup> Emergency treatment is already addressed in s.916.107(3)(a)1., F.S.

<sup>16</sup> See *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006), noting that statutory provisions governing authorization of nonconsensual treatment with psychotropic medications violated the patient's state constitutional guarantees of liberty and privacy and in the absence of emergency, could not authorize the state to administer such medication, unless this was in the best interests of the patient and that no less intrusive treatment was available. Currently, Florida law provides that a forensic client may, in the existence of an immediate danger to the safety of themselves or others, be given medication for no more than 48 hours. S. 916.107(3)(a)1., F.S. The nonconsensual administration of medication by judicial order was challenged in Florida, in *Moreland v. State*, 706 So.2d 71, (Fla. 1st DCA), where the court struck down a judicial order for failure to comply with the statutory requirement of a multidisciplinary treatment team.

### Dismissal of Charges

The bill reduces the timeframe in which a person adjudicated as incompetent to proceed due to mental illness may have their charges dismissed from five to two years. The bill provides an exception for capital felonies, which will remain at five years.<sup>17</sup> DCF reports that data from the past 12 years shows that 98.7 percent of individuals were restored to competency in two years or less.<sup>18</sup>

### Determinations of Incompetency for Juvenile Delinquency Cases

The bill establishes criteria that a forensic evaluator shall use when reporting to the court as to whether a child is competent to proceed. If the child is determined to be incompetent, the evaluator must provide a mental disorder that forms the basis of the incompetency. The evaluator must also present a summary of findings that includes:

- The date and length of time of the face to face diagnostic clinical interview;
- A statement that identifies the mental health disorder;
- A statement of how the child would benefit from competency restoration in the community or in a residential setting;
- An assessment of treatment length, and whether the juvenile will attain competence in the future; and
- A description of appropriate mental health treatment and education.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 916.107, F.S., relating to rights of forensic clients.

**Section 2:** Amends s. 916.111, F.S., relating to training of mental health experts.

**Section 3:** Amends s. 916.115, F.S., relating to appointment of experts.

**Section 4:** Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

**Section 5:** Amends s. 916.145, F.S., relating to dismissal of charges.

**Section 6:** Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

**Section 7:** Amends s. 985.19, F.S., relating to incompetency in juvenile cases.

**Section 8:** Provides for an effective date.

## 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:

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<sup>17</sup> A capital felony must be designated as such by statute. S. 775.081, F.S.

<sup>18</sup> DCF data shows that from FY 1998-99 to FY 2009-10, of a total of 12,016 individuals adjudicated not competent to proceed, 98.7% of them were restored in less than two years. DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

None.

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

Mental health experts who wish to participate in forensic evaluations will be required to pay for the department authorized training every 5 years to be on the registry. The cost for this training is currently \$445 or \$395 for state or non-profit employees.<sup>19</sup>

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

Line 71 could be clarified by providing a timeframe for pursuing court orders for continued medication and limits on the amount of time a medication may be continued while awaiting the order. Similar constraints are provided for in emergency situation under s. 916.107(3)(a)(1), F.S..

Lines 275 and 282 incorrectly refer to the most current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association as the DSM-IV,<sup>20</sup> and could be amended to not specifically name the edition.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>19</sup> DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

<sup>20</sup> <http://www.psych.org/MainMenu/Research/DSMIV/FAQs/WhatisthemostrecentversionoftheDSM.aspx>, site last visited January 14, 2012.

1                                   A bill to be entitled  
 2           An act relating to mental health; amending s. 916.107,  
 3           F.S.; authorizing, in certain circumstances,  
 4           continuation of psychotherapeutic medication for  
 5           individuals receiving such medication in a jail before  
 6           admission to a psychiatric or forensic facility;  
 7           amending s. 916.111, F.S.; requiring forensic  
 8           evaluator training for mental health experts appointed  
 9           to evaluate defendants for competency to proceed or  
 10          for sanity at the time of the commission of the  
 11          offense; amending s. 916.115, F.S.; requiring the  
 12          Department of Children and Family Services to maintain  
 13          and annually provide the courts with a forensic  
 14          evaluator registry; amending s. 916.13, F.S.;  
 15          providing timeframes for competency hearings to be  
 16          held; amending s. 916.145, F.S.; reducing the time for  
 17          dismissal of charges for defendants found  
 18          nonrestorable from 5 years to 2 years, except in the  
 19          case of capital offenses which shall remain at 5  
 20          years; amending s. 916.15, F.S.; providing timeframes  
 21          for commitment hearings to be held; amending s.  
 22          985.19, F.S.; standardizing the protocols, procedures,  
 23          and criteria used in reporting expert findings in  
 24          determining competency in juvenile cases; revising  
 25          requirements related to the forensic evaluator  
 26          training program that appointed experts must complete;  
 27          requiring experts after a specified date to have  
 28          completed such training; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

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

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written order of a physician who has determined that the emergency

57 | situation continues to present a danger to the safety of the  
 58 | client or others.

59 |       2. In a situation other than an emergency situation, the  
 60 | administrator or designee of the facility shall petition the  
 61 | court for an order authorizing necessary and essential treatment  
 62 | for the client.

63 |       a. If the client has been receiving psychotherapeutic  
 64 | medication at the jail at the time of transfer to the forensic  
 65 | or civil facility and lacks the capacity to make an informed  
 66 | decision regarding mental health treatment at the time of  
 67 | admission, the admitting physician may order continued  
 68 | administration of the psychotherapeutic medication if, in the  
 69 | clinical judgment of the physician, abrupt cessation of the  
 70 | psychotherapeutic medication could cause a risk to the health  
 71 | and safety of the client during the time a court order to  
 72 | medicate is pursued. The jail physician shall provide a current  
 73 | psychotherapeutic medication order at the time of transfer to  
 74 | the forensic or civil facility.

75 |       b. The court order shall allow such treatment for up to a  
 76 | period not to exceed 90 days after following the date of the  
 77 | entry of the order. Unless the court is notified in writing that  
 78 | the client has provided express and informed consent in writing  
 79 | or that the client has been discharged by the committing court,  
 80 | the administrator or designee shall, before ~~prior to~~ the  
 81 | expiration of the initial 90-day order, petition the court for  
 82 | an order authorizing the continuation of treatment for another  
 83 | 90 days ~~90-day period~~. This procedure shall be repeated until  
 84 | the client provides consent or is discharged by the committing

85 court.

86 3. At the hearing on the issue of whether the court should  
 87 enter an order authorizing treatment for which a client was  
 88 unable to or refused to give express and informed consent, the  
 89 court shall determine by clear and convincing evidence that the  
 90 client has mental illness, retardation, or autism, that the  
 91 treatment not consented to is essential to the care of the  
 92 client, and that the treatment not consented to is not  
 93 experimental and does not present an unreasonable risk of  
 94 serious, hazardous, or irreversible side effects. In arriving at  
 95 the substitute judgment decision, the court must consider at  
 96 least the following factors:

- 97 a. The client's expressed preference regarding treatment;
- 98 b. The probability of adverse side effects;
- 99 c. The prognosis without treatment; and
- 100 d. The prognosis with treatment.

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102 The hearing shall be as convenient to the client as may be  
 103 consistent with orderly procedure and shall be conducted in  
 104 physical settings not likely to be injurious to the client's  
 105 condition. The court may appoint a general or special magistrate  
 106 to preside at the hearing. The client or the client's guardian,  
 107 and the representative, shall be provided with a copy of the  
 108 petition and the date, time, and location of the hearing. The  
 109 client has the right to have an attorney represent him or her at  
 110 the hearing, and, if the client is indigent, the court shall  
 111 appoint the office of the public defender to represent the  
 112 client at the hearing. The client may testify or not, as he or

113 she chooses, and has the right to cross-examine witnesses and  
 114 may present his or her own witnesses.

115 Section 2. Section 916.111, Florida Statutes, is amended  
 116 to read:

117 916.111 Training of mental health experts.—

118 (1) The evaluation of defendants for competency to proceed  
 119 or for sanity at the time of the commission of the offense shall  
 120 be conducted in such a way as to ensure uniform application of  
 121 the criteria enumerated in Rules 3.210 and 3.216, Florida Rules  
 122 of Criminal Procedure.

123 (2) Appointed experts shall have completed forensic  
 124 evaluator training as specified in this section.

125 (3) A forensic evaluator training course approved by the  
 126 department must be provided at least annually to ensure that  
 127 mental health professionals have the opportunity to be placed on  
 128 the department's forensic evaluator registry.

129 (a) Beginning July 1, 2013, if an expert chooses to remain  
 130 on the registry, he or she must have completed or retaken the  
 131 required training course within the previous 5 years. Those who  
 132 have not completed the training course must be removed from the  
 133 registry and may not conduct evaluations for the courts.

134 (b) A mental health professional who has completed the  
 135 training course within the previous 5 years must maintain  
 136 documentation of completion of the required training course and  
 137 provide current contact information to the department.

138 (4) The department shall develop, and may contract with  
 139 accredited institutions:

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

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

144           ~~2.(b)~~ Clinical protocols and procedures based upon the  
 145 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal  
 146 Procedure; and

147           ~~3.(c)~~ Training for mental health professionals in the  
 148 application of these protocols and procedures in performing  
 149 forensic evaluations and providing reports to the courts; and

150           ~~(b)(2)~~ To compile and maintain the necessary information  
 151 for evaluating the success of this program, including the number  
 152 of persons trained, the cost of operating the program, and the  
 153 effect on the quality of forensic evaluations as measured by  
 154 appropriateness of admissions to state forensic facilities and  
 155 to community-based care programs.

156           Section 3. Paragraph (b) of subsection (1) of section  
 157 916.115, Florida Statutes, is amended to read:

158           916.115 Appointment of experts.—

159           (1) The court shall appoint no more than three experts to  
 160 determine the mental condition of a defendant in a criminal  
 161 case, including competency to proceed, insanity, involuntary  
 162 placement, and treatment. The experts may evaluate the defendant  
 163 in jail or in another appropriate local facility or in a  
 164 facility of the Department of Corrections.

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

169 Section 4. Subsection (2) of section 916.13, Florida  
 170 Statutes, is amended to read:

171 916.13 Involuntary commitment of defendant adjudicated  
 172 incompetent.—

173 (2) A defendant who has been charged with a felony and who  
 174 has been adjudicated incompetent to proceed due to mental  
 175 illness, and who meets the criteria for involuntary commitment  
 176 ~~to the department under the provisions of this chapter,~~ may be  
 177 committed to the department, and the department shall retain and  
 178 treat the defendant.

179 (a) Within No later than 6 months after the date of  
 180 admission and at the end of any period of extended commitment,  
 181 or at any time the administrator or designee has ~~shall have~~  
 182 determined that the defendant has regained competency to proceed  
 183 or no longer meets the criteria for continued commitment, the  
 184 administrator or designee shall file a report with the court  
 185 pursuant to the applicable Florida Rules of Criminal Procedure.

186 (b) A competency hearing must be held within 30 days after  
 187 a court receives notification that the defendant is competent to  
 188 proceed or no longer meets the criteria for continued  
 189 commitment.

190 Section 5. Section 916.145, Florida Statutes, is amended  
 191 to read:

192 916.145 Dismissal of charges.—The charges against any  
 193 defendant adjudicated incompetent to proceed due to the  
 194 defendant's mental illness shall be dismissed without prejudice  
 195 to the state if the defendant remains incompetent to proceed 2 5  
 196 years after such determination or 5 years after such

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197 determination if the charge is a capital offense, unless the  
 198 court in its order specifies its reasons for believing that the  
 199 defendant will become competent to proceed within the  
 200 foreseeable future and specifies the time within which the  
 201 defendant is expected to become competent to proceed. The  
 202 charges against the defendant shall be ~~are~~ dismissed without  
 203 prejudice to the state to refile the charges if ~~should~~ the  
 204 defendant is ~~be~~ declared competent to proceed in the future.

205 Section 6. Subsection (5) is added to section 916.15,  
 206 Florida Statutes, to read:

207 916.15 Involuntary commitment of defendant adjudicated not  
 208 guilty by reason of insanity.—

209 (5) The commitment hearing must be held within 30 days  
 210 after the court receives notification that the defendant no  
 211 longer meets the criteria for continued commitment.

212 Section 7. Subsection (1) of section 985.19, Florida  
 213 Statutes, is amended, subsection (7) is renumbered as subsection  
 214 (8), and a new subsection (7) is added to that section, to read:

215 985.19 Incompetency in juvenile delinquency cases.—

216 (1) If, at any time prior to or during a delinquency case,  
 217 the court has reason to believe that the child named in the  
 218 petition may be incompetent to proceed with the hearing, the  
 219 court on its own motion may, or on the motion of the child's  
 220 attorney or state attorney must, stay all proceedings and order  
 221 an evaluation of the child's mental condition.

222 (a) Any motion questioning the child's competency to  
 223 proceed must be served upon the child's attorney, the state  
 224 attorney, the attorneys representing the Department of Juvenile

225 Justice, and the attorneys representing the Department of  
 226 Children and Family Services. Thereafter, any motion, notice of  
 227 hearing, order, or other legal pleading relating to the child's  
 228 competency to proceed with the hearing must be served upon the  
 229 child's attorney, the state attorney, the attorneys representing  
 230 the Department of Juvenile Justice, and the attorneys  
 231 representing the Department of Children and Family Services.

232 (b) All determinations of competency must ~~shall~~ be made at  
 233 a hearing, with findings of fact based on an evaluation of the  
 234 child's mental condition made by at least ~~not less than~~ two but  
 235 not ~~nor~~ more than three experts appointed by the court. ~~The~~  
 236 ~~basis for the determination of incompetency must be specifically~~  
 237 ~~stated in the evaluation. In addition, a recommendation as to~~  
 238 ~~whether residential or nonresidential treatment or training is~~  
 239 ~~required must be included in the evaluation.~~ Experts appointed  
 240 by the court to determine the mental condition of a child shall  
 241 be allowed reasonable fees for services rendered. State  
 242 employees may be paid expenses pursuant to s. 112.061. The fees  
 243 shall be taxed as costs in the case.

244 (c) A child is competent to proceed if the child has  
 245 sufficient present ability to consult with counsel with a  
 246 reasonable degree of rational understanding and the child has a  
 247 rational and factual understanding of the present proceedings.

248 (d) The basis for the determination of a child's mental  
 249 condition must be specifically stated in the expert's competency  
 250 evaluation report and must include written findings that:

- 251 1. Identify the specific matters referred for evaluation.
- 252 2. Identify the sources of information used by the expert.

253       3. Describe the procedures, techniques, and diagnostic  
 254 tests used in the examination to determine the basis of the  
 255 child's mental condition.

256       4. Address the child's capacity to:

257       a. Appreciate the charges or allegations against the  
 258 child.

259       b. Appreciate the range and nature of possible penalties  
 260 that may be imposed in the proceedings against the child, if  
 261 applicable.

262       c. Understand the adversarial nature of the legal process.

263       d. Disclose to counsel facts pertinent to the proceedings  
 264 at issue.

265       e. Display appropriate courtroom behavior.

266       f. Testify relevantly.

267       5. Present the factual basis for the expert's clinical  
 268 findings and opinions of the child's mental condition.

269       (e) If the evaluator determines the child to be  
 270 incompetent to proceed to trial, the evaluator must report on  
 271 the mental disorder that forms the basis of the incompetency.

272       (f) The expert's factual basis of his or her clinical  
 273 findings and opinions must be supported by the diagnostic  
 274 criteria found in the most recent edition of the Diagnostic and  
 275 Statistical Manual of the American Psychiatric Association (DSM-  
 276 IV) and must be presented in a section of his or her competency  
 277 evaluation report that shall be identified as a summary of  
 278 findings. This section must include:

279       1. The day, month, year, and length of time of the face-  
 280 to-face diagnostic clinical interview to determine the child's

281 mental condition.

282 2. A statement that identifies the DSM-IV clinical name  
 283 and associated diagnostic code for the specific mental disorder  
 284 that forms the basis of the child's incompetency.

285 3. A statement of how the child would benefit from  
 286 competency restoration services in the community or in a secure  
 287 residential treatment facility.

288 4. An assessment of the probable duration of the treatment  
 289 to restore competence, and the probability that the child will  
 290 attain competence to proceed in the foreseeable future.

291 5. A description of recommended treatment or education  
 292 appropriate for the mental disorder.

293 (g)(e) All court orders determining incompetency must  
 294 include specific written findings by the court as to the nature  
 295 of the incompetency and whether the child requires a secure or  
 296 nonsecure treatment or training environment environments.

297 (h)(d) For competency incompetency evaluations related to  
 298 mental illness, the Department of Children and Family Services  
 299 shall maintain and annually provide the courts with a forensic  
 300 evaluator registry list of available mental health professionals  
 301 who have completed the approved a training as experts pursuant  
 302 to this section program approved by the Department of Children  
 303 and Family Services to perform the evaluations.

304 (i)(e) For competency incompetency evaluations related to  
 305 mental retardation or autism, the court shall order the Agency  
 306 for Persons with Disabilities to examine the child to determine  
 307 if the child meets the definition of "retardation" or "autism"  
 308 in s. 393.063 and provide a clinical opinion as to, if so,

309 whether the child is competent to proceed with delinquency  
 310 proceedings.

311 ~~(f) A child is competent to proceed if the child has~~  
 312 ~~sufficient present ability to consult with counsel with a~~  
 313 ~~reasonable degree of rational understanding and the child has a~~  
 314 ~~rational and factual understanding of the present proceedings.~~  
 315 ~~The report must address the child's capacity to:~~

- 316 ~~1. Appreciate the charges or allegations against the~~  
 317 ~~child.~~
- 318 ~~2. Appreciate the range and nature of possible penalties~~  
 319 ~~that may be imposed in the proceedings against the child, if~~  
 320 ~~applicable.~~
- 321 ~~3. Understand the adversarial nature of the legal process.~~
- 322 ~~4. Disclose to counsel facts pertinent to the proceedings~~  
 323 ~~at issue.~~
- 324 ~~5. Display appropriate courtroom behavior.~~
- 325 ~~6. Testify relevantly.~~

326 (j)~~(g)~~ Immediately upon the filing of the court order  
 327 finding a child incompetent to proceed, the clerk of the court  
 328 shall notify the Department of Children and Family Services and  
 329 the Agency for Persons with Disabilities and fax or hand deliver  
 330 to the department and to the agency a referral packet that  
 331 includes, at a minimum, the court order, the charging documents,  
 332 the petition, and the court-appointed evaluator's reports.

333 (k)~~(h)~~ After placement of the child in the appropriate  
 334 setting, the Department of Children and Family Services in  
 335 consultation with the Agency for Persons with Disabilities, as  
 336 appropriate, must, within 30 days after placement of the child,

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337 | prepare and submit to the court a treatment or training plan for  
 338 | the child's restoration of competency. A copy of the plan must  
 339 | be served upon the child's attorney, the state attorney, and the  
 340 | attorneys representing the Department of Juvenile Justice.

341 | (7) Effective July 1, 2013, court-appointed experts must  
 342 | have completed forensic evaluator training approved by the  
 343 | Department of Children and Family Services and comply with these  
 344 | additional requirements:

345 | (a) If an expert chooses to remain on the registry, the  
 346 | expert must have completed or retaken the required training  
 347 | course within the previous 5 years. An expert who has not  
 348 | completed the required training within the previous 5 years must  
 349 | be removed from the registry and may not conduct competency  
 350 | evaluations for the courts.

351 | (b) A mental health professional who has completed the  
 352 | training course within the previous 5 years must maintain  
 353 | documentation of having completed the required training and  
 354 | provide current contact information to the Department of  
 355 | Children and Family Services.

356 | Section 8. This act shall take effect July 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 529 Adult Day Care Centers  
**SPONSOR(S):** Corcoran  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Guzzo <i>GG</i>	Schoolfield <i>[Signature]</i>
2) Rulemaking & Regulation Subcommittee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

The bill creates the "Alzheimer's Adult Day Care Dignity Act (Act)." The act imposes increased standards by creating a specialty license for adult day care centers (ADCCs) wishing to hold themselves out to the public as providing specialized care for individuals with Alzheimer's disease or other dementia related disorders. Adult day care centers currently advertising as providing specialty care for Alzheimer's disease or other dementia-related disorders will be required to obtain the specialty license or cease advertising as providing these specialty services. Under the Act, ADCCs wishing to obtain the specialty license will be required to meet certain standards of care and provide a program for dementia-specific, therapeutic activities.

The bill requires additional staff, increased monitoring, and training in order to hold an adult day care license for a center specializing in Alzheimer's disease or other dementia-related disorders. The bill also increases the requirements to become an operator of an ADCC specializing in Alzheimer's disease or other dementia-related disorders.

Under the Act, participants will be required to have a documented diagnosis of Alzheimer's disease or a dementia-related disorder from a physician licensed in this state. This will exclude participants not having such a diagnosis from being admitted to the center.

The bill appears to have an insignificant fiscal impact (See fiscal comments).

The bill has an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Alzheimer's Disease

There is an estimated 5.4 million people in the United States with Alzheimer's disease, including 5.2 million people aged 65 and older and 200,000 individuals under age 65 who have younger-onset Alzheimer's disease.<sup>1</sup> In addition, there is an estimated 459,806 individuals suffering from Alzheimer's disease in the state of Florida.<sup>2</sup>

By 2030, the segment of the United States population aged 65 years and older is expected to double; and the estimated 71 million older Americans will make up approximately 20 percent of the total population.<sup>3</sup> By 2050, the number of people aged 65 and older with Alzheimer's disease is expected to triple to a projected 16 million people.<sup>4</sup>

##### Adult Day Care Centers - General

Adult day care centers (ADCCs) are regulated by the Agency for Health Care Administration (AHCA) pursuant to part II of chapter 408, F.S., and part III of chapter 429, F.S. An adult day care center is defined as "any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services."<sup>5</sup>

Nearly half of all patients in adult day care centers in the United States suffer from Alzheimer's disease or another form of dementia. Currently, there are 202 licensed ADCCs in the State of Florida.<sup>6</sup> Section 429.90, F.S., directs AHCA to develop, establish, and enforce basic standards for ADCCs in order to assure that a program of therapeutic social and health activities and services is provided to adults who have functional impairments. Section 429.929, F.S., authorizes the Department of Elder Affairs, in conjunction with AHCA, to adopt rules to implement the provisions of part III of chapter 429, F.S.

Each center must offer a planned program of varied activities and services promoting and maintaining the health of participants and encouraging leisure activities, interaction and communication among participants on a daily basis. Such activities and services must be available during at least sixty-percent of the time the center is open.<sup>7</sup>

##### *Participant Eligibility*

Participant eligibility in ADCCs is limited to adults with functional impairments in need of a protective environment and a program of therapeutic social and health activities and services. Centers are prohibited from accepting participants who require medication during the time spent at the center and who are incapable of self-administration of medications, unless there is a person to provide this service

<sup>1</sup> Alzheimer's Association, 2011 Alzheimer's Disease Fact and Figures, located at [http://www.alz.org/alzheimers\\_disease\\_facts\\_and\\_figures.asp](http://www.alz.org/alzheimers_disease_facts_and_figures.asp)

<sup>2</sup> Florida Department of Elder Affairs, 2011 Florida State Profile, located at [http://elderaffairs.state.fl.us/english/pubs/stats/County\\_2011Projections/Florida\\_Map.html](http://elderaffairs.state.fl.us/english/pubs/stats/County_2011Projections/Florida_Map.html)

<sup>3</sup> Alzheimer's Association, 2011 Alzheimer's Disease Fact and Figures, located at [http://www.alz.org/alzheimers\\_disease\\_facts\\_and\\_figures.asp](http://www.alz.org/alzheimers_disease_facts_and_figures.asp)

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

<sup>5</sup> S. 429.901(1), F.S.

<sup>6</sup> AHCA, *Staff Analysis and Economic Impact, House Bill Number 529* (December 15, 2011).

<sup>7</sup> Rule 58A-6.008(1), F.A.C.

who is licensed to administer medications.<sup>8</sup> Participants are required to provide a statement within forty-five days prior to admission signed by a physician documenting freedom from tuberculosis and freedom from signs and symptoms of other communicable diseases.<sup>9</sup> Participants shall not be admitted or retained in a center if the required services are beyond those that the center is licensed to provide.<sup>10</sup>

### *Staffing Requirements*

Adult day care centers are required to have one staff member for every six participants, and at no time may a center have less than two staff members present.<sup>11</sup> Staffing must be maintained at all times to meet the needs of the participants as required by the participant file.<sup>12</sup> The owner or operator may be counted as one of the required staff members if they provide direct services and are included in the work schedule for the center.<sup>13</sup>

### *Optional Supportive Services*

Adult day care centers may choose to provide optional supportive services. If provided, such services must be administered by staff qualified to provide such services. One of the optional supportive services that an ADCC may choose to provide is adult day health care services for disabled adults or aged persons. If an ADCC chooses to provide this service it must comply with certain standards relating to the operation of the center.<sup>14</sup> The center must have a registered nurse or licensed practical nurse (LPN) on site. If the center chooses an LPN, the LPN must be supervised in accordance with chapter 464, F.S. To be considered a qualified operator of an ADCC, providing optional supportive services, the operator must:<sup>15</sup>

- Hold a minimum of a Bachelor's degree in a health or social services or related field with one year of supervisory experience in a social or health service setting; or
- Hold a registered nurse license with one year of supervisory experience; or
- Have five years of supervisory experience in a social or health service setting.

### **Adult Day Care Centers-Alzheimer's Specific Requirements**

Adult day care centers are required to provide the following Alzheimer's specific staff training:<sup>16</sup>

- Each employee must receive basic written information about interacting with participants who have Alzheimer's disease or other dementia-related disorders;
- Personnel whose responsibilities require them to have direct contact with participants who have Alzheimer's disease or other dementia-related disorders must complete initial training of at least one hour within the first three months of employment; and
- Employees who will be providing direct care to a participant who has Alzheimer's disease or other dementia-related disorders must complete an additional three hours of training within the first nine months of employment.

Current law requires ADCCs who claim to provide special care for individuals with Alzheimer's disease or other related disorders to disclose in its advertisements or in a separate document those services that distinguish the care as being applicable to such persons.<sup>17</sup> At the time of survey, AHCA reviews

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<sup>8</sup> Rule 58A-6.006(1)(a), F.A.C.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Rule 58A-6.006(8), F.A.C.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Rule 58A-6.010(6), F.A.C.

<sup>15</sup> Rule 58A-6.010(6)(c), F.A.C.

<sup>16</sup> S. 429.917(1), F.S.

<sup>17</sup> S. 429.917(2), F.S.

documentation and advertisements relating to specialty care provided at the ADCC.<sup>18</sup> There are no additional requirements placed on a center wishing to hold itself out as an ADCC providing such specialized services.<sup>19</sup>

### **Effect of Proposed Changes**

The bill creates the “Alzheimer’s Adult Day Care Dignity Act.” The bill provides for an adult day care specialty license for ADCCs wishing to hold themselves out to the public as providing specialized care for individuals with Alzheimer’s disease or other dementia-related disorders. The bill requires additional staff, increased monitoring, and training in order to hold an adult day care license for a center specializing in Alzheimer’s or other dementia-related disorders.

Adult day care centers currently advertising as providing specialty care for Alzheimer’s disease or other dementia related disorders will be required to become compliant with the increased licensure requirements of the bill or cease advertising or holding themselves out to the public as providing these specialty services. The bill does not provide for any grandfathering provisions for centers currently advertising that they specialize in Alzheimer’s disease or other dementia-related services.

Adult day care centers seeking the specialty license must meet the following additional requirements beyond the standards contained in s. 429.917, F.S.:

- Have a mission statement that includes a commitment to providing dementia-specific services;
- Disclose in the center’s advertisements or in a separate document the services that distinguish the care as being suitable for a person who has Alzheimer’s disease or a dementia-related disorder;
- Provide a program for dementia-specific, therapeutic activities;
- Maintain a staff-to-participant ratio of one staff member who provides direct services for every five participants. This is an increase from the current staff to patient ratio requirement of one staff member for every six participants under Rule 58A-6.006(8)(a), F.A.C.;
- Provide a program for therapeutic activity at least seventy-percent of the time that the center is open. This is an increase from the current requirement of sixty-percent under Rule 58A-6.008, F.A.C.;
- Use assessment tools that identify the participant’s cognitive deficits and identify the specialized and individualized needs of the participant and the caregiver. This assessment must be conducted upon the participants admission to the center and must be updated annually;
- Create an individualized plan of care for each participant, which addresses the dementia-specific needs of the participant and the caregiver. The plan of care must be established upon the participants admission to the center and must be reviewed monthly;
- Conduct a monthly health assessment of the participant;
- Complete a monthly narrative in the participant’s file regarding their status or progress toward meeting the goals indicated on the individualized plan of care;
- Assist in the referral or coordination of other dementia-specific services and resources needed by the participant or caregiver;
- Offer, facilitate, or provide referrals to a support group for caregivers;
- Provide to participants and caregivers at least one dementia-specific educational program every three months;
- Conduct and document a count of all participants present in the center at least three times each day;
- Be a secured unit or have working, audible alarm devices installed on every door that provides egress from the center and is accessible to the participants;
- Not allow a participant to administer their own medication; and
- Not allow a participant to drive to or from the center.

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<sup>18</sup> AHCA, *Staff Analysis and Economic Impact, House Bill Number 529* (December 15, 2011).

<sup>19</sup> *Id.*

The bill requires participant files to contain a data sheet, which must be completed within 45 days before or within 24 hours after admission to the ADCC. The data sheet must contain information regarding the status of the participant's enrollment in an identification or wandering-prevention program, including the name of the program and a current photograph of the participant.

The bill requires an ADCC to give to each participant or the participant's caregiver a copy of the participant's plan of care, and a copy of the policies and procedures of the center, which must include information pertaining to driving for those persons affected by Alzheimer's disease or dementia, available technology on wandering-prevention devices and identification devices, the Silver Alert program, and dementia-specific safety interventions and strategies that can be use in the home setting.

### *Training Requirements*

Currently, ADCC staff must meet the following Alzheimer's specific training requirements:<sup>20</sup>

- Personnel whose responsibilities require them to have direct contact with participants who have Alzheimer's disease or other dementia-related disorders must complete initial training of at least one hour within the first three months of employment; and
- Employees who will be providing direct care to a participant who has Alzheimer's disease or other dementia-related disorders must complete an additional three hours of training within the first nine months of employment.

The bill requires personnel of facilities who hold the Alzheimer's specialty license to meet the following Alzheimer's specific training requirements:

- Personnel whose responsibilities require them to have direct contact with participants who have Alzheimer's disease or dementia-related disorders must complete four hours of dementia-specific training within the first three months of employment.
- Each employee who provides direct care to participants will be required to complete an additional four hours of dementia-specific training within the first six months of employment.

Currently, ADCC staff members are required to be trained to implement the policies and procedures specified in the orientation and training plan.<sup>21</sup> The orientation and training plan is a written plan developed and reviewed at least annually and implemented throughout the year which describes a coordinated program for staff training for each service and for orientation of each new staff member on center policies, procedures, assigned duties and responsibilities, which must begin no later than the first day of employment.<sup>22</sup> The bill requires staff orientation to include information regarding Alzheimer's disease and other dementia related disorders; procedures to locate a participant who has wandered from the center; information on the Silver Alert program; and information regarding available products or programs used to identify participants or prevent them from wandering away from the center.

### *Operator Requirements*

Currently, operators of ADCCs are not required to meet any educational or background experience requirements to qualify as an operator. In order to obtain the Alzheimer's specialty license, the bill requires ADCC operators to meet the educational and experience requirements that are currently only applicable to ADCCs who chose to provide optional supportive services for disabled adults or aged persons. Adult day care center operators, or their designees, will be required to have a Bachelors degree in health care services, social services, or a related field, one year of supervisory experience in a social services or health care service setting, and have a minimum of one-year of experience in providing dementia-specific services. A person may also qualify to be an operator if they possess a license as a registered nurse, have one year of supervisory experience in a social services or health

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<sup>20</sup> S. 429.917, F.S.

<sup>21</sup> Rule 58A-6.007(2), F.A.C.

<sup>22</sup> Rule 58A-6.002(o), F.A.C.

care services setting, and have a minimum of one year of experience in providing dementia-specific services. Lastly, a person may qualify as an operator if they have five years of supervisory experience in social services or health care services, and a minimum of three years of experience in providing dementia-specific services.

### *Participant Eligibility*

The bill creates additional admission requirements for participants seeking admittance in an ADCC holding the Alzheimer's specialty license. The additional admission requirements would prohibit a center having the specialty license from being able to admit participants other than those meeting the specific admission requirements. These specialty centers would not be able to service populations other than those participants.<sup>23</sup> The bill requires potential ADCC participants to meet the following pre-admission requirements:

- Have a documented diagnosis, from a licensed physician, of Alzheimer's disease or a dementia-related disorder. This would limit ADCCs to only serve participants who have a diagnosis of Alzheimer's disease or a dementia-related disorder;
- Require ongoing supervision to maintain the highest level of medical or custodial functioning and have a demonstrated need for a responsible party to oversee his or her care;
- Be mobile to the degree that the person can bear enough weight to assist in transferring themselves between seating and standing positions;
- Must not require more than two staff members to safely transfer the person from a seated position to a standing position;
- Must not actively demonstrate aggressive behavior that places themselves or others at risk of harm; and
- Provide additional medical documentation signed by a licensed physician or a health care provider, which must include:
  - Any physical or emotional conditions that require medical care;
  - A listing of the current prescribed medications and dosages, diet restrictions, and mobility restrictions; and
  - Proof that the person is free of the communicable form of tuberculosis and free of signs and symptoms of other communicable diseases.

The bill also requires the ADCC to make certain determinations regarding the centers ability to treat the potential participant before admission. The ADCC must determine whether:

- The medical, psychological, or behavioral support and intervention required by the person can be provided by the center; and
- The resources required to assist with the person's acuity of care and support needed can be provided or coordinated by the center.

The bill requires ADCCs to coordinate and execute appropriate discharge procedures for participants who have had their enrollment involuntarily terminated due to medical or behavioral reasons.

## **B. SECTION DIRECTORY:**

Section 1. Creates the Alzheimer's Adult Day Care Dignity Act.

Section 2. Provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

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<sup>23</sup> AHCA, *Staff Analysis and Economic Impact, House Bill Number 529* (December 15, 2011).

1. Revenues:

None.

2. Expenditures:

See fiscal comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require more and different staff and expenses for adult day care centers wishing to obtain the Adult Day Care Specialized Alzheimer's Services License.

The bill will prohibit existing adult day care centers, who choose not to obtain a specialty license, from advertising that they provide specialized care for individuals with Alzheimer's disease or other dementia-related disorder. This could have a negative fiscal impact on these centers through lost revenue from participants who would previously be attracted to their center.

D. FISCAL COMMENTS:

Licensure fees from the creation of the specialty license may be used to cover the cost of licensure and required surveys if increased appropriately.<sup>24</sup>

The Agency for Health Care Administration expects this legislation to result in annual recurring expenditures of \$94,204, due to the need for the following additional resources.<sup>25</sup>

- Increase in work hours for the current Health Services and Facilities Consultant position from 1040 work hours to 2080 work hours (an addition of 0.5 FTE) to implement a new specialty license;
- A FTE to act as Senior Human Services Program Specialist (surveyor) to review more regulatory requirements during on-site surveys. This position would need salary funding above the base rate of pay for recruitment and retention purposes and would require a tablet notebook with a docking station.

### 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.

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

**B. RULE-MAKING AUTHORITY:**

The bill authorizes the Department of Elderly Affairs to adopt rules.

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

The bill does not specifically state the "Alzheimer's Adult Day Care Dignity Act" will become part of Chapter 429, Part III, F.S. If the bill is intended to have the Agency for Health Care Administration as the licensing authority, it should be placed in Chapter 429, Part III, F.S., and require adherence with the Agency's current licensure laws contained in Chapter 408, Part II, F.S.

Line 59 of the bill references s. 429.917, F.S., as additional standards for licensure. This may be an incorrect reference since this section only addresses patients with Alzheimer's disease and other related disorders. The correct statutory reference for additional licensure requirements as an adult day care center is Chapter 429, Part III, F.S.

Line 165 of the bill requires participants to have a documented diagnosis of Alzheimer's disease or a dementia-related disorder. This exclusivity may create an unintended consequence of precluding a spouse without Alzheimer's disease from attending the center with their husband or wife with a diagnosis of Alzheimer's disease.

Lines 236 to 240 of the bill appears to prohibit certain advertising by adult day care centers who currently advertise that they provide specialized care for individuals with Alzheimer's disease or other dementia-related disorders. This could have a negative economic impact on these ADCCs which currently serve large numbers of Alzheimer's participants.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to adult day care centers; providing a  
 3           short title; providing definitions; providing for the  
 4           licensure of adult day care centers that provide  
 5           specialized Alzheimer's services; requiring an adult  
 6           day care center seeking such licensure to meet  
 7           specified criteria; providing educational and  
 8           experience requirements for the operator of an adult  
 9           day care center seeking licensure to provide  
 10          specialized Alzheimer's services; providing criteria  
 11          for staff training and supervision; providing the  
 12          minimum ratio of staff members to participants;  
 13          providing requirements for staff orientation;  
 14          providing requirements for admission into such an  
 15          adult day care center; requiring that a participant's  
 16          file include a data sheet, which must be completed  
 17          within a certain timeframe; requiring that certain  
 18          information be included in the data sheet; requiring  
 19          that dementia-specific services be documented in a  
 20          participant's file; requiring that a participant's  
 21          plan of care be reviewed each month; requiring that  
 22          certain notes be entered into a participant's file;  
 23          requiring the participant to provide the adult day  
 24          care center with updated medical documentation;  
 25          requiring the center to give each person who enrolls  
 26          as a participant or the caregiver a copy of the  
 27          participant's plan of care and a copy of the center's  
 28          policies and procedures; requiring the center to

29 coordinate and execute discharge procedures with a  
 30 participant whose enrollment in the center is  
 31 involuntarily terminated; providing that only an adult  
 32 day care center that holds an appropriate license may  
 33 use the term "adult day care - specialized Alzheimer's  
 34 services" or advertise that it provides specialized  
 35 care for persons who have Alzheimer's disease or other  
 36 dementia-related disorders; authorizing the Department  
 37 of Elderly Affairs to adopt rules; providing an  
 38 effective date.

39  
 40 Be It Enacted by the Legislature of the State of Florida:

41  
 42 Section 1. (1) This act may be cited as the "Alzheimer's  
 43 Adult Day Care Dignity Act."

44 (2) As used in this section, the term:

45 (a) "Dementia" means the loss of at least two intellectual  
 46 functions, such as thinking, remembering, and reasoning, which  
 47 is severe enough to interfere with a person's daily function.  
 48 The term does not describe a disease, but describes a group of  
 49 symptoms that may accompany certain diseases or physical  
 50 conditions.

51 (b) "Specialized Alzheimer's services" means therapeutic,  
 52 behavioral, health, safety, and security interventions; clinical  
 53 care; support services; and educational services that are  
 54 customized for the specialized needs of a participant's  
 55 caregiver and the participant who is affected by Alzheimer's  
 56 disease or an irreversible, degenerative condition resulting in

57 dementia.

58 (3) In addition to the standards required for licensure as  
 59 an adult day care center under s. 429.917, Florida Statutes, an  
 60 adult day care center may seek licensure under this section as  
 61 an adult day care center - specialized Alzheimer's services.

62 (4) An adult day care center seeking licensure under this  
 63 section must:

64 (a) Have a mission statement that includes a commitment to  
 65 providing dementia-specific services and disclose in the  
 66 center's advertisements or in a separate document the services  
 67 that distinguish the care as being suitable for a person who has  
 68 Alzheimer's disease or a dementia-related disorder.

69 (b) Provide a program for dementia-specific, therapeutic  
 70 activities, including, but not limited to, physical, cognitive,  
 71 and social activities appropriate for a participant's level of  
 72 function.

73 (c) Maintain at all times a minimum staff-to-participant  
 74 ratio of one staff member who provides direct services for every  
 75 five participants.

76 (d) Provide a program for therapeutic activity at least 70  
 77 percent of the time that the center is open to participants.

78 (e) Use assessment tools that identify the participant's  
 79 cognitive deficits and identify the specialized and  
 80 individualized needs of the participant and the caregiver, if  
 81 applicable. This assessment must be conducted when the  
 82 participant is initially admitted into the center and must be  
 83 updated at least annually.

84 (f) Create an individualized plan of care for each

85 participant which addresses the identified, dementia-specific  
 86 needs of the participant and the caregiver, if applicable. The  
 87 plan of care must be established when the participant is  
 88 initially admitted into the center and reviewed at least  
 89 monthly.

90 (g) Conduct a monthly health assessment of the participant  
 91 which includes, but is not limited to, the participant's weight,  
 92 vital signs, and level of assistance needed with activities of  
 93 daily living.

94 (h) Complete a monthly narrative in the participant's file  
 95 regarding the participant's status or progress toward meeting  
 96 the goals indicated on the individualized plan of care.

97 (i) Assist in the referral or coordination of other  
 98 dementia-specific services and resources needed by the  
 99 participant or the caregiver, such as medical services,  
 100 counseling, medical planning, legal planning, financial  
 101 planning, safety and security planning, disaster planning,  
 102 driving assessment, and wandering prevention. The center may  
 103 establish relationships with providers that have a demonstrated  
 104 knowledge and commitment to serving participants affected by  
 105 Alzheimer's disease or a dementia-related disorder and their  
 106 caregivers.

107 (j) Offer, facilitate, or provide referrals to a support  
 108 group for persons who are caregivers to participants who are  
 109 affected by Alzheimer's disease or a dementia-related disorder.

110 (k) Provide to participants and caregivers at least one  
 111 dementia-specific educational program every 3 months.

112 (l) Conduct and document at least three times each day a

113 count of all participants present in the center. This count must  
 114 be compared to each participant's attendance record to ensure  
 115 that a participant is not missing from the center.

116 (m) Be a secured unit or have working, audible alarm  
 117 devices installed on every door that provides egress from the  
 118 center and is accessible to the participants.

119 (n) Not allow a participant to administer his or her own  
 120 medication.

121 (o) Not allow a participant to drive himself or herself to  
 122 or from the center.

123 (5) (a) The operator of an adult day care center licensed  
 124 under this section, or the operator's designee, must:

125 1. Have at least a bachelor's degree in health care  
 126 services, social services, or a related field, 1 year of  
 127 supervisory experience in a social services or health care  
 128 services setting, and a minimum of 1 year of experience in  
 129 providing dementia-specific services;

130 2. Be licensed as a registered nurse, have 1 year of  
 131 supervisory experience in a social services or health care  
 132 services setting, and have a minimum of 1 year of experience in  
 133 providing dementia-specific services; or

134 3. Have 5 years of supervisory experience in a social  
 135 services or health care services setting and a minimum of 3  
 136 years of experience in providing dementia-specific services.

137 (b) An adult day care center licensed under this section  
 138 must provide the following staff training and supervision:

139 1. A registered nurse or licensed practical nurse must be  
 140 on site during all hours of program operation. Each licensed

141 practical nurse who works at the center must be supervised in  
 142 accordance with chapter 464, Florida Statutes.

143 2. Each employee who has direct contact with participants  
 144 must complete 4 hours of state-approved, dementia-specific  
 145 training within the first 3 months following employment.

146 3. Each employee who provides direct care to participants  
 147 must complete an additional 4 hours of state-approved training  
 148 in dementia within 6 months following employment.

149 4. A staff member who provides direct care to a  
 150 participant must provide hands-on assistance and care with the  
 151 participant's activities of daily living.

152 (c) The plan for staff orientation must include, at a  
 153 minimum:

154 1. Information regarding Alzheimer's disease and other  
 155 dementia-related disorders.

156 2. Procedures to locate a participant who has wandered  
 157 from the center. These procedures must be reviewed at least once  
 158 every 3 months with all direct care staff.

159 3. Information on the Silver Alert program in this state.

160 4. Information regarding available products or programs  
 161 used to identify participants or prevent them from wandering  
 162 away from the center.

163 (6) (a) In order to be admitted as a participant into an  
 164 adult day care center licensed under this section, a person:

165 1. Must have a documented diagnosis of Alzheimer's disease  
 166 or a dementia-related disorder from a physician licensed in this  
 167 state.

168 2. Must require ongoing supervision to maintain the

169 highest level of medical or custodial functioning and have a  
 170 demonstrated need for a responsible party to oversee his or her  
 171 care.

172 3. Must be mobile to the degree that the person can bear  
 173 enough weight to assist in transferring himself or herself  
 174 between seated and standing positions.

175 4. Must not require more than two staff members to safely  
 176 transfer the person from a seated position to a standing  
 177 position.

178 5. Must not actively demonstrate aggressive behavior that  
 179 places himself, herself, or others at risk of harm.

180 6. Must provide the following medical documentation signed  
 181 by a physician licensed in this state or a health care provider  
 182 under the direct supervision of a physician licensed in this  
 183 state:

184 a. Any physical or emotional conditions that require  
 185 medical care;

186 b. A listing of the current prescribed medications and  
 187 dosages, diet restrictions, and mobility restrictions; and

188 c. Proof that the person is free of the communicable form  
 189 of tuberculosis and free of signs and symptoms of other  
 190 communicable diseases.

191 (b) Before a person is admitted as a participant into an  
 192 adult day care center licensed under this section, the center  
 193 must determine whether:

194 1. The medical, psychological, or behavioral support and  
 195 intervention required by the person can be provided by the  
 196 center.

197 2. The resources required to assist with the person's  
 198 acuity of care and support needed can be provided or coordinated  
 199 by the center.

200 (7) (a) A participant's file must include a data sheet,  
 201 which must be completed within 45 days before or within 24 hours  
 202 after admission to an adult day care center licensed under this  
 203 section. The data sheet must contain:

204 1. Information regarding the status of the participant's  
 205 enrollment in an identification or wandering-prevention program,  
 206 including the name of the program; and

207 2. A current photograph of the participant.

208 (b) Dementia-specific services must be documented in a  
 209 participant's file.

210 (c) A participant's plan of care must be reviewed at least  
 211 once each month. Notes regarding nursing and social work  
 212 services provided to the participant and the participant's  
 213 activities must be entered at least monthly in the participant's  
 214 file, and must indicate the participant's status or progress  
 215 toward achieving identified goals. Additional notes must be  
 216 entered more frequently if indicated by the participant's  
 217 condition.

218 (d) A participant shall annually provide the center with  
 219 updated medical documentation required under subparagraph

220 (6) (a) 6., and the center must place that documentation in the  
 221 participant's file.

222 (8) An adult day care center licensed under this section  
 223 must give to each person who enrolls as a participant in the  
 224 center or the caregiver a copy of the participant's plan of care

225 and a copy of the policies and procedures of the center which  
 226 must include, but are not limited to, information pertaining to  
 227 driving for those persons affected by dementia, available  
 228 technology on wandering-prevention devices and identification  
 229 devices, the Silver Alert program in this state, and dementia-  
 230 specific safety interventions and strategies that can be used in  
 231 the home setting.

232 (9) If a participant's enrollment in the center is  
 233 involuntarily terminated due to medical or behavioral reasons,  
 234 the center shall coordinate and execute appropriate discharge  
 235 procedures with the participant and the caregiver.

236 (10) Only an adult day care center licensed under this  
 237 section may use the term "adult day care - specialized  
 238 Alzheimer's services" and advertise that the center provides  
 239 specialized care for persons who have Alzheimer's disease or  
 240 other dementia-related disorders.

241 (11) The Department of Elderly Affairs may adopt rules to  
 242 administer this section.

243 Section 2. This act shall take effect July 1, 2012.

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Health & Human Services  
2 Access Subcommittee  
3 Representative Corcoran offered the following:  
4

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Subsection (2) of section 429.917, Florida Statutes,  
8 is amended to read:

9 429.917 Patients with Alzheimer's disease or other related  
10 disorders; staff training requirements; certain disclosures.-

11 (2) A center licensed under this part which claims that it  
12 provides special care for persons who have Alzheimer's disease  
13 or other related disorders must disclose in its advertisements  
14 or in a separate document those services that distinguish the  
15 care as being especially applicable to, or suitable for, such  
16 persons. The center must give a copy of all such advertisements  
17 or a copy of the document to each person who requests  
18 information about the center and must maintain a copy of all  
19 such advertisements and documents in its records. The agency

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20 shall examine all such advertisements and documents in the  
21 center's records as part of the license renewal procedure. An  
22 adult day care center may not claim to be licensed to provide  
23 specialized Alzheimer's services unless it has been licensed  
24 pursuant to s. 429.918.

25 Section 2. Section 429.918, Florida Statutes, is created  
26 to read:

27 429.918 Certification for specialized Alzheimer's  
28 services.-

29 (1) This act may be cited as the "Specialized Alzheimer's  
30 Services Adult Day Care Act."

31 (2) As used in this section, the term:

32 (a) "ADRD participant" means a participant who has a  
33 documented diagnosis of Alzheimer's disease or a dementia-  
34 related disorder (ADRD) from a licensed physician or a health  
35 care provider who is under the direct supervision of a licensed  
36 physician.

37 (b) "Dementia" means the loss of at least two intellectual  
38 functions, such as thinking, remembering, and reasoning, which  
39 is severe enough to interfere with a person's daily function.  
40 The term does not describe a disease, but describes a group of  
41 symptoms that may accompany certain diseases or physical  
42 conditions.

43 (c) "Specialized Alzheimer's services" means therapeutic,  
44 behavioral, health, safety, and security interventions; clinical  
45 care; support services; and educational services that are  
46 customized for the specialized needs of a participant's  
47 caregiver and the participant who is affected by Alzheimer's

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48 disease or an irreversible, degenerative condition resulting in  
49 dementia.

50 (3) In addition to the standards required for licensure as  
51 an adult day care center under this part, an adult day care  
52 center may seek voluntary licensure under this section as an  
53 adult day care center - specialized Alzheimer's services.

54 (4) An adult day care center seeking licensure under this  
55 section must:

56 (a) Have a mission statement that includes a commitment to  
57 proving dementia-specific services and disclose in the center's  
58 advertisements or in a separate document the services that  
59 distinguish the care as being suitable for a person who has  
60 Alzheimer's disease or a dementia-related disorder.

61 (b) Provide ADRD participants with a program for dementia-  
62 specific, therapeutic activities, including, but not limited to,  
63 physical, cognitive, and social activities appropriate for the  
64 ADRD participant's age, culture, and level of function.

65 (c) Maintain at all times a minimum staff-to-participant  
66 ratio of one staff member who provides direct services for every  
67 five ADRD participants.

68 (d) Provide ADRD participants with a program for  
69 therapeutic activity at least 70 percent of the time that the  
70 center is open.

71 (e) Provide ADRD participants with hands-on assistance  
72 with activities of daily living, inclusive of the provision of  
73 urinary and bowel incontinence care.

74 (f) Use assessment tools that identify the ADRD  
75 participant's cognitive deficits and identify the specialized

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76 and individualized needs of the ADRD participant and the  
77 caregiver. This assessment shall be conducted when the ADRD  
78 participant is initially admitted into the center and shall be  
79 updated when the ADRD participant experiences a significant  
80 change, but no less frequently than annually.

81 (g) Create an individualized plan of care for each ADRD  
82 participant which addresses the identified, dementia-specific  
83 needs of the ADRD participant and the caregiver. The plan of  
84 care shall be established when the ADRD participant is initially  
85 admitted into the center and reviewed at least quarterly.

86 (h) Conduct a monthly health assessment of each ADRD  
87 participant which includes, but is not limited to, the ADRD  
88 participant's weight, vital signs, and level of assistance  
89 needed with activities of daily living.

90 (i) Complete a monthly update in each ADRD participant's  
91 file regarding the ADRD participant's status or progress toward  
92 meeting the goals indicated on the individualized plan of care.

93 (j) Assist in the referral or coordination of other  
94 dementia-specific services and resources needed by the ADRD  
95 participant or the caregiver, such as medical services,  
96 counseling, medical planning, legal planning, financial  
97 planning, safety and security planning, disaster planning,  
98 driving assessment, transportation coordination, or wandering  
99 prevention.

100 (k) Offer, facilitate, or provide referrals to a support  
101 group for persons who are caregivers to ADRD participants.

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102 (1) Provide dementia-specific educational materials  
103 regularly to ADRD participants, as appropriate, and their  
104 caregivers.

105 (m) Routinely conduct and document a count of all ADRD  
106 participants present in the center throughout each day. This  
107 count must be compared to each ADRD participant's attendance  
108 record in order to ensure that an ADRD participant is not  
109 missing from the center.

110 (n) Be a secured unit or have working alarm or security  
111 devices installed on every door that is accessible to the ADRD  
112 participant and provides egress from the center or areas of the  
113 center designated for the provision of adult day care -  
114 specialized Alzheimer's services.

115 (o) Not allow an ADRD participant to administer his or her  
116 own medication.

117 (p) Not allow an ADRD participant to drive himself or  
118 herself to or from the center.

119 (5) The operator of an adult day care center licensed  
120 under this section, and the operator's designee, as applicable,  
121 hired on or after July 1, 2012, shall:

122 (a) Have at least a bachelor's degree in health care  
123 services, social services, or a related field, 1 year of  
124 supervisory experience in a social services or health care  
125 services setting, and a minimum of 1 year of experience in  
126 providing services to persons who have dementia;

127 (b) Be a registered or practical nurse licensed in this  
128 state, have 1 year of supervisory experience in a social  
129 services or health care services setting, and have a minimum of

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130 1 year of experience in providing services to persons who have  
131 dementia; or

132 (c) Have 5 years of supervisory experience in a social  
133 services or health care services setting and a minimum of 3  
134 years of experience in providing services to persons who have  
135 dementia.

136 (6) (a) An adult day care center licensed under this  
137 section must provide the following staff training and  
138 supervision:

139 1. A registered nurse or licensed practical nurse must be  
140 on site daily for at least 75 percent of the time that the  
141 center is open to ADRD participants. Each licensed practical  
142 nurse who works at the center must be supervised in accordance  
143 with chapter 464.

144 2. Upon beginning employment with the center, each  
145 employee must receive basic written information about  
146 interacting with ADRD participants.

147 3. In addition to the information provided in subparagraph  
148 2., every employee hired on or after July 1, 2012, who has  
149 direct contact with ADRD participants shall complete 4 hours of  
150 dementia-specific training within 3 months after employment.

151 4. In addition to the requirements of subparagraphs 2. and  
152 3., each employee hired on or after July 1, 2012, who provides  
153 direct care to ADRD participants shall complete an additional 4  
154 hours of dementia-specific training within 6 months after  
155 employment.

156 (b) The Department of Elderly Affairs or its designee  
157 shall approve the training required under this section. The

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158 department shall adopt rules to establish standards for  
159 employees who are subject to this training, for trainers, and  
160 for the training required in this section.

161 (c) Upon completing any training described in this  
162 section, the employee shall be issued a certificate that  
163 includes the name of the training provider, the topics covered,  
164 and the date and signature of the training provider. The  
165 certificate is evidence of completion of training in the  
166 identified topics, and the employee is not required to repeat  
167 training in those topics if the employee changes employment to a  
168 different adult day care center.

169 (d) Each employee hired on or after July 1, 2012, who  
170 provides direct care to ADRD participants, must receive an  
171 orientation plan that includes, at a minimum:

172 1. Procedures to locate an ADRD participant who has  
173 wandered from the center. These procedures shall be reviewed  
174 regularly with all direct care staff.

175 2. Information on the Silver Alert program in this state.

176 3. Information regarding available products or programs  
177 used to identify ADRD participants or prevent them from  
178 wandering away from the center, their home, or other locations.

179 (7)(a) An ADRD participant admitted to an adult day care  
180 center licensed under this section must:

181 1. Require ongoing supervision to maintain the highest  
182 level of medical or custodial functioning and have a  
183 demonstrated need for a responsible party to oversee his or her  
184 care.

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185 2. Not actively demonstrate aggressive behavior that  
186 places himself, herself, or others at risk of harm.

187 3. Provide the following medical documentation signed by a  
188 licensed physician or a health care provider who is under the  
189 direct supervision of a licensed physician:

190 a. Any physical, health, or emotional conditions that  
191 require medical care.

192 b. A listing of the ADRD participant's current prescribed  
193 and over-the-counter medications and dosages, diet restrictions,  
194 mobility restrictions, and other physical limitations.

195 4. Provide documentation signed by a health care provider  
196 licensed in this state which indicates that the ADRD participant  
197 is free of the communicable form of tuberculosis and free of  
198 signs and symptoms of other communicable diseases.

199 (b) Before admitting an ADRD participant to an adult day  
200 care center licensed under this section, the center shall  
201 determine whether:

202 1. The medical, psychological, safety, and behavioral  
203 support and intervention required by the ADRD participant can be  
204 provided by the center.

205 2. The resources required to assist with the ADRD  
206 participant's acuity level of care and support needed can be  
207 provided or coordinated by the center.

208 (8) (a) An ADRD participant's file must include a data  
209 sheet, which must be completed within 45 days before or within  
210 24 hours after admission to an adult day care center licensed  
211 under this section. The data sheet must contain:

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212 1. Information regarding the status of the ADRD  
213 participant's enrollment in an identification or wandering-  
214 prevention program, including the name of the program; and

215 2. A current photograph of the ADRD participant.

216 (b) Dementia-specific services shall be documented in the  
217 ADRD participant's file.

218 (c) An ADRD participant's plan of care must be reviewed at  
219 least quarterly. Notes regarding services provided to the ADRD  
220 participant must be entered at least monthly in the ADRD  
221 participant's file, and must indicate the ADRD participant's  
222 status or progress toward achieving identified goals. Additional  
223 notes must be entered more frequently if indicated by the ADRD  
224 participant's condition.

225 (d) An ADRD participant shall annually provide the center  
226 with updated medical documentation required under subparagraphs  
227 (7)(a)3. and 4., and the center must place that documentation in  
228 the ADRD participant's file.

229 (9) An adult day care center licensed under this section  
230 must give to each person who enrolls as an ADRD participant in  
231 the center, or the caregiver, a copy of the ADRD participant's  
232 plan of care, as well as information regarding resources to  
233 assist in ensuring the safety and security of the ADRD  
234 participant, which must include, but need not be limited to,  
235 information pertaining to driving for those persons affected by  
236 dementia, available technology on wandering-prevention devices  
237 and identification devices, the Silver Alert program in this  
238 state, and dementia-specific safety interventions and strategies  
239 that can be used in the home setting.

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240       (10) If an ADRD participant's enrollment in the center is  
241 involuntarily terminated due to medical or behavioral reasons,  
242 the center shall coordinate and execute appropriate discharge  
243 procedures with the ADRD participant and the caregiver.

244       (11) This section does not prohibit an adult day care  
245 center that does not become licensed under this section from  
246 providing adult day care services to persons who have  
247 Alzheimer's disease or other dementia-related disorders.

248       (12) The Department of Elderly Affairs may adopt rules to  
249 administer this section.

250       Section 3. This act shall take effect July 1, 2012.

251  
252  
253 -----  
254                   **T I T L E   A M E N D M E N T**

255       Remove the entire title and insert:

256       An act relating to adult day care centers; amending s. 429.917,  
257       F.S.; prohibiting an adult day care center from claiming to be  
258       licensed to provide specialized Alzheimer's services under  
259       certain circumstances; creating s. 429.918, F.S.; providing a  
260       short title; providing definitions; providing for the voluntary  
261       licensure of adult day care centers that provide specialized  
262       Alzheimer's services; requiring an adult day care center seeking  
263       such licensure to meet specified criteria; providing educational  
264       and experience requirements for the operator of an adult day  
265       care center seeking licensure to provide specialized Alzheimer's  
266       services; providing criteria for staff training and supervision;  
267       requiring that the Department of Elderly Affairs approve the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 529 (2012)

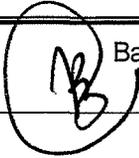
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268 staff training; requiring the department to adopt rules;  
269 requiring that the employee be issued a certificate upon  
270 completion of the staff training; providing requirements for  
271 staff orientation; providing requirements for admission into  
272 such an adult day care center; requiring that a participant's  
273 file include a data sheet, which shall be completed within a  
274 certain timeframe; requiring that certain information be  
275 included in the data sheet; requiring that dementia-specific  
276 services be documented in a participant's file; requiring that a  
277 participant's plan of care be reviewed quarterly; requiring that  
278 certain notes be entered into a participant's file; requiring  
279 the participant to provide the adult day care center with  
280 updated medical documentation; requiring the center to give each  
281 person who enrolls as a participant, or the caregiver, a copy of  
282 the participant's plan of care and safety information; requiring  
283 that the center coordinate and execute discharge procedures with  
284 a participant who has a documented diagnosis of Alzheimer's  
285 disease or a dementia-related disorder and the caregiver if the  
286 participant's enrollment in the center is involuntarily  
287 terminated; providing that the act does not prohibit an adult  
288 day care center that does not become licensed to provide  
289 specialized Alzheimer's services from providing adult day care  
290 services to persons who have Alzheimer's disease or other  
291 dementia-related disorders; authorizing the Department of  
292 Elderly Affairs to adopt rules; providing an effective date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1195 Advanced Registered Nurse Practitioners  
SPONSOR(S): Campbell  
TIED BILLS: IDEN./SIM. BILLS: SB 1750

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		 Batchelor	Schoolfield 
2) Judiciary Committee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 1195 amends s. 394.463, F.S, permitting Advanced Registered Nurse Practitioners (ARNP) to execute a certificate for involuntary examination of a person for mental illness at a receiving facility designated by the Department of Children and Families. Current law provides that physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists and clinical social workers may execute certificates for involuntary examination.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### *Involuntary Examination (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. Chapter 394, Part I, Florida Statutes 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. The Department of Children and Families (DCF) administers this law 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 for the involuntary examination and short term treatment of persons who meet criteria under this act.<sup>1</sup> 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.<sup>2</sup>

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 the person has refused a voluntary examination after explanation of the purpose of the exam or the person is unable to determine for themselves that an examination is needed and is likely to suffer from self neglect, substantial harm to themselves or be a danger to themselves or others.<sup>3</sup> An involuntary examination may be initiated by any of the following:<sup>4</sup>

- A court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. This order is based on the sworn testimony by the petitioner, either written or oral.
- A law enforcement officer may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.
- Physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists or clinical social workers may issue a certificate stating that a person they examined within the preceding 48 hours meets the criteria for involuntary examination.

Current law provides that physicians, clinical psychologists, and psychiatric nurses who issue certificates for involuntary examinations must have additional experience and/or additional education requirements related to mental disorders.<sup>5</sup> Clinical Social Workers are required by law to have experience in providing psychotherapy and counseling.<sup>6</sup> The Marriage and Family Therapist practice includes methods of a psychological nature used to evaluate, assess, diagnose, treat and prevent emotional and mental disorders or dysfunctions<sup>7</sup>.

During the 2009, there were 136,120 involuntary examinations initiated in the state. Law enforcement initiated almost half of the involuntary exams (48.89 percent) followed by mental health professionals (48.74 percent) and then *ex parte* orders by judges (2.37 percent).<sup>8</sup>

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<sup>1</sup> Section 394.455(26), F.S.

<sup>2</sup> Section 394.455(32), F.S.

<sup>3</sup> Section 394.463(1), F.S.

<sup>4</sup> Section 394.463, F.S.

<sup>5</sup> Sections 394.455(2)(21)(23), F.S.

<sup>6</sup> Section 491.003(3), F.S.

<sup>7</sup> Section 491.003(8), F.S.

<sup>8</sup> Report of Baker Act Data, Summary of Data from 2009. USF, de la Parte Florida Mental Health Institute. <http://bakeract.fmhi.usf.edu/>. (last visited January 12, 2012).

## *Advanced Registered Nurse Practitioner (ARNP)*

Part I of Chapter 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 (BON). Licensure requirements to practice professional nursing include completion of education requirements<sup>9</sup>, demonstration of passage of a department-approved examination, a clean criminal background screening, and payment of applicable fees.<sup>10</sup> Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

A nurse who holds a license to practice professional nursing may be certified as an ARNP under s. 464.012, F.S., if the nurse meets one or more of the following requirements:

- Completion of a post basic education program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board, such as a registered nurse anesthetist or nurse midwife; or
- Possession of a master's degree in a nursing clinical specialty area.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.<sup>11</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>12</sup> ARNPs may carry out treatments as specified in statute, including:<sup>13</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.;<sup>14</sup>
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above permitted acts, ARNPs may also perform other acts as permitted in statute within his/her specialty.<sup>15</sup> In addition if it is within the ARNPs established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.<sup>16</sup>

There are 13,519 active, licensed ARNPs in Florida.<sup>17</sup>

### **Effect of Proposed Changes:**

The bill amends s. 394.463, F.S. permitting an ARNP to execute a certificate stating that a person, who the ARNP has examined within the preceding 48 hours, appears to meet criteria for involuntary examination for mental illness.

Current law provides that physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists and clinical social workers may execute certificates for

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<sup>9</sup> 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>10</sup> Section 464.009, F.S., provides an alternative to licensure by examination for nurses through licensure by endorsement.

<sup>11</sup> Section 464.012(2), F.S.

<sup>12</sup> Section 464.012(3), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 464.003(2), F.S. defines "Advanced or Specialized Nursing Practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.

<sup>15</sup> Section 464.012(4), F.S.

<sup>16</sup> Section 464.012(4)(c)5, F.S.

<sup>17</sup> Florida Department of Health, Medical Quality Assurance Annual Report 2010-2011.

involuntary examination. These professions are required by statute to have experience and/or education in mental health treatment. The ARNP program requires students to have education in behavioral sciences.<sup>18</sup>

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 394.463, F.S., relating to involuntary examination.

**Section 2:** Provides an effective date of July 1, 2012.

**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:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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<sup>18</sup> 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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1                   A bill to be entitled  
2           An act relating to advanced registered nurse  
3           practitioners; amending s. 394.463, F.S.; authorizing  
4           advanced registered nurse practitioners to initiate  
5           involuntary examinations under the Baker Act of  
6           persons believed to have mental illness; providing an  
7           effective date.

8

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

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11           Section 1. Paragraph (a) of subsection (2) of section  
12   394.463, Florida Statutes, is amended to read:

13           394.463 Involuntary examination.—

14           (2) INVOLUNTARY EXAMINATION.—

15           (a) An involuntary examination may be initiated by any one  
16   of the following means:

17           1. A court may enter an ex parte order stating that a  
18   person appears to meet the criteria for involuntary examination,  
19   giving the findings on which that conclusion is based. The ex  
20   parte order for involuntary examination must be based on sworn  
21   testimony, written or oral. If other less restrictive means are  
22   not available, such as voluntary appearance for outpatient  
23   evaluation, a law enforcement officer, or other designated agent  
24   of the court, shall take the person into custody and deliver him  
25   or her to the nearest receiving facility for involuntary  
26   examination. The order of the court shall be made a part of the  
27   patient's clinical record. No fee shall be charged for the  
28   filing of an order under this subsection. Any receiving facility

29 accepting the patient based on this order must send a copy of  
 30 the order to the Agency for Health Care Administration on the  
 31 next working day. The order shall be valid only until executed  
 32 or, if not executed, for the period specified in the order  
 33 itself. If no time limit is specified in the order, the order  
 34 shall be valid for 7 days after the date that the order was  
 35 signed.

36 2. A law enforcement officer shall take a person who  
 37 appears to meet the criteria for involuntary examination into  
 38 custody and deliver the person or have him or her delivered to  
 39 the nearest receiving facility for examination. The officer  
 40 shall execute a written report detailing the circumstances under  
 41 which the person was taken into custody, and the report shall be  
 42 made a part of the patient's clinical record. Any receiving  
 43 facility accepting the patient based on this report must send a  
 44 copy of the report to the Agency for Health Care Administration  
 45 on the next working day.

46 3. A physician, clinical psychologist, psychiatric nurse,  
 47 mental health counselor, marriage and family therapist, ~~or~~  
 48 clinical social worker, or advanced registered nurse  
 49 practitioner may execute a certificate stating that he or she  
 50 has examined a person within the preceding 48 hours and finds  
 51 that the person appears to meet the criteria for involuntary  
 52 examination and stating the observations upon which that  
 53 conclusion is based. If other less restrictive means are not  
 54 available, such as voluntary appearance for outpatient  
 55 evaluation, a law enforcement officer shall take the person  
 56 named in the certificate into custody and deliver him or her to

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57 | the nearest receiving facility for involuntary examination. The  
58 | law enforcement officer shall execute a written report detailing  
59 | the circumstances under which the person was taken into custody.  
60 | The report and certificate shall be made a part of the patient's  
61 | clinical record. Any receiving facility accepting the patient  
62 | based on this certificate must send a copy of the certificate to  
63 | the Agency for Health Care Administration on the next working  
64 | day.

65 |       Section 2. This act shall take effect July 1, 2012.