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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to substance abuse services; amending s. 394.4572, F.S.; authorizing the Department of Children and Families and the Agency for Health Care Administration to grant exemptions from disqualification for certain service provider personnel; amending s. 397.311, F.S.; redefining the terms "clinical supervisor" and "recovery residence"; defining the terms "clinical services supervisor," "clinical director," and "peer specialist"; amending s. 397.321, F.S.; providing for the review of certain decisions by a department-recognized certifying entity; authorizing certain persons to request an administrative hearing within a specified timeframe and under certain circumstances; amending s. 397.4073, F.S.; requiring individuals screened on or after a specified date to undergo specified background screening; requiring the department to grant or deny a request for an exemption from qualification within a certain timeframe; authorizing certain applicants for an exemption to work under the supervision of certain persons for a specified period of time while his or her application is pending; authorizing certain persons to be exempt from disqualification from employment; authorizing the department to grant exemptions from disqualification for service provider personnel to work solely in certain treatment programs

and facilities; amending s. 397.4075, F.S.; increasing the criminal penalty for certain unlawful activities relating to personnel; providing a criminal penalty for inaccurately disclosing certain facts in an application for licensure; creating s. 397.417, F.S.; providing legislative intent; authorizing an individual to seek certification as a peer specialist if he or she meets certain requirements; requiring the department to approve one or more third-party credentialing entities for specified purposes; requiring the credentialing entity to demonstrate compliance with certain standards in order to be approved by the department; requiring an individual providing department-funded recovery support services as a peer specialist to be certified; authorizing an individual who is not certified to provide recovery support services as a peer specialist under certain circumstances; prohibiting an individual who is not a certified peer specialist from advertising or providing recovery services unless the person is exempt; providing criminal penalties; authorizing the department, a behavioral health managing entity, or the Medicaid program to reimburse peer specialist services as a recovery service; encouraging Medicaid managed care plans to use peer specialists in providing recovery services; amending s. 397.487, F.S.; revising legislative findings relating to voluntary certification of recovery residences; revising background screening requirements for owners,

directors, and chief financial officers of recovery residences; authorizing a certified recovery residence to immediately discharge or transfer residents under certain circumstances; specifying that a local governmental entity is not prohibited from requiring mandatory certification of recovery residences for certain purposes; requiring the Sober Homes Task Force within the Office of the State Attorney of the Fifteenth Judicial Circuit to submit a report to the Legislature containing certain recommendations; amending s. 397.4873, F.S.; expanding the exceptions to limitations on referrals by recovery residences to licensed service providers; amending s. 397.55, F.S.; revising the requirements for a service provider, operator of a recovery residence, or certain third parties to enter into certain contracts with marketing providers; amending s. 435.07, F.S.; authorizing the exemption of certain persons from disqualification from employment; amending s. 553.80, F.S.; requiring that a single-family or two-family dwelling used as a recovery residence be deemed a single-family or two-family dwelling for purposes of the Florida Building Code; amending ss. 212.055, 397.416, and 440.102, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (2) of section 394.4572, Florida

Statutes, is amended to read:

394.4572 Screening of mental health personnel.—

(2)(a) The department or the Agency for Health Care Administration may grant exemptions from disqualification as provided in chapter 435.

(b) The department or the Agency for Health Care Administration, as applicable, may grant exemptions from disqualification for service provider personnel to work solely in mental health treatment programs or facilities, or in programs or facilities that treat co-occurring substance use and mental health disorders.

Section 2. Present subsections (30) through (49) of section 397.311, Florida Statutes, are redesignated as subsections (31) through (50), respectively, subsection (8) and present subsection (37) of that section are amended, and subsection (30) is added to that section, to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(8)"Clinical supervisor," "clinical services supervisor," or "clinical director" means a person who meets the requirements of a qualified professional and who manages personnel who provide direct clinical services, or who maintains lead responsibility for the overall coordination and provision of clinical services ~~treatment~~.

(30) "Peer specialist" means a person who has been in recovery from a substance use disorder or mental illness for at least 2 years and who uses his or her personal experience to provide services in behavioral health settings, supporting others in their recovery; or a person who has at least 2 years

of experience as a family member or caregiver of an individual who has a substance use disorder or mental illness. The term does not include a qualified professional or a person otherwise certified under chapter 394 or chapter 397.

(38) ~~(37)~~ "Recovery residence" means a residential dwelling unit, or other form of group housing, including group housing that is part of any licensable community housing component established by rule or statute, which ~~that~~ is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

Section 3. Subsection (15) of section 397.321, Florida Statutes, is amended to read:

397.321 Duties of the department.—The department shall:

(15) Recognize a statewide certification process for addiction professionals and identify and endorse one or more agencies responsible for such certification of service provider personnel. Any decision by a department-recognized certifying entity to deny, revoke, or suspend a certification, or otherwise impose sanctions on an individual who is certified, is reviewable by the department. Upon receiving an adverse determination, the person aggrieved may request an administrative hearing conducted pursuant to ss. 120.569 and 120.57(1) within 30 days after completing any appeals process offered by the credentialing entity or the department, as applicable.

Section 4. Paragraphs (a), (f), and (g) of subsection (1), and subsection (4) of section 397.4073, Florida Statutes, are

amended to read:

397.4073 Background checks of service provider personnel.—

(1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND EXCEPTIONS.—

(a) For all individuals screened on or after July 1, 2019, background checks shall apply as follows:

1. All owners, directors, chief financial officers, and clinical supervisors of service providers are subject to level 2 background screening as provided under chapter 435 and s. 408.809. Inmate substance abuse programs operated directly or under contract with the Department of Corrections are exempt from this requirement.

2. All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services are subject to level 2 background screening as provided under chapter 435 and s. 408.809.

3. All peer specialists who have direct contact with individuals receiving services are subject to level 2 background screening as provided under chapter 435 and s. 408.809.

(f) Service provider personnel who request an exemption from disqualification must submit the request within 30 days after being notified of the disqualification. The department shall grant or deny the request within 60 days after receipt of a complete application.

(g) If 5 years or more have elapsed since an applicant for an exemption from disqualification has completed or has been lawfully released from confinement, supervision, or a nonmonetary condition imposed by a court for the applicant's

most recent disqualifying offense, the applicant may work with adults with substance use disorders or co-occurring disorders under the supervision of persons who meet all personnel requirements of this chapter for up to 90 days after being notified of his or her disqualification or until the department makes a final determination regarding his or her request for an exemption from disqualification, whichever is earlier ~~the most recent disqualifying offense, service provider personnel may work with adults with substance use disorders under the supervision of a qualified professional licensed under chapter 490 or chapter 491 or a master's-level-certified addictions professional until the agency makes a final determination regarding the request for an exemption from disqualification~~.

(h) ~~(g)~~ The department may not issue a regular license to any service provider that fails to provide proof that background screening information has been submitted in accordance with chapter 435.

(4) EXEMPTIONS FROM DISQUALIFICATION.—

(a) The department may grant to any service provider personnel an exemption from disqualification as provided in s. 435.07.

(b) Since rehabilitated substance abuse impaired persons are effective in the successful treatment and rehabilitation of individuals with substance use disorders, for service providers which treat adolescents 13 years of age and older, service provider personnel whose background checks indicate crimes under s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c), s. 817.563, s. 831.01, s. 831.02, s. 893.13, or s. 893.147, and any related criminal attempt, solicitation, or conspiracy under s. 777.04,

may be exempted from disqualification from employment pursuant to this paragraph.

(c) The department may grant exemptions from disqualification for service provider personnel to work solely in substance use disorder treatment programs, facilities, or recovery residences or in programs or facilities that treat co-occurring substance use and mental health disorders. The department may further limit such ~~grant~~ exemptions from disqualification ~~which would limit service provider personnel~~ to working with adults in substance abuse treatment facilities.

Section 5. Section 397.4075, Florida Statutes, is amended to read:

397.4075 Unlawful activities relating to personnel; penalties.—It is a felony of the third ~~misdemeanor of the first~~ degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

(1) Inaccurately disclose by false statement, misrepresentation, impersonation, or other fraudulent means, or fail to disclose, in any application for licensure or voluntary or paid employment, any fact which is material in making a determination as to the person's qualifications to be an owner, a director, a volunteer, or other personnel of a service provider;

(2) Operate or attempt to operate as a service provider with personnel who are in noncompliance with the minimum standards contained in this chapter; or

(3) Use or release any criminal or juvenile information obtained under this chapter for any purpose other than background checks of personnel for employment.

Section 6. Section 397.417, Florida Statutes, is created to read:

397.417 Peer Specialists.—

(1) The Legislature intends to expand the use of peer specialists as a cost-effective means of providing services by ensuring that peer specialists meet specified qualifications, meet modified background screening requirements, and are adequately reimbursed for their services.

(2) An individual may seek certification as a peer specialist if he or she has been in recovery from a substance use disorder or mental illness for at least 2 years, or if he or she has at least 2 years of experience as a family member or caregiver of a person with a substance use disorder or mental illness.

(3) The department shall approve one or more third-party credentialing entities for the purposes of certifying peer specialists, approving training programs for individuals seeking certification as peer specialists, approving continuing education programs, and establishing the minimum requirements and standards that applicants must achieve to maintain certification. To obtain approval, the third-party credentialing entity must demonstrate compliance with nationally recognized standards for developing and administering professional certification programs to certify peer specialists.

(4) An individual providing department-funded recovery support services as a peer specialist shall be certified pursuant to subsection (3). An individual who is not certified may provide recovery support services as a peer specialist for up to 1 year if he or she is working toward certification and is


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supervised by a qualified professional or by a certified peer specialist who has at least 3 years of full-time experience as a peer specialist at a licensed behavioral health organization.

(5) An individual who is not a certified peer specialist may not advertise recovery services to the public in any way, or by any medium; or provide recovery services as a peer specialist, unless the person is exempt under subsection (4). Any individual who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Peer specialist services may be reimbursed as a recovery service through the department, a behavioral health managing entity, or the Medicaid program. Medicaid managed care plans are encouraged to use peer specialists in providing recovery services.

Section 7. Subsections (1) and (6) of section 397.487, Florida Statutes, are amended, and subsections (11), (12), and (13) are added to that section, to read:

397.487 Voluntary certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence while receiving treatment or after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435 and s. 408.809. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) or s. 408.809(4) unless the department has issued an exemption under s. 397.4073 or s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

(11) Notwithstanding any landlord and tenant rights and obligations under chapter 83, a recovery residence that is certified under this section and that has a discharge policy approved by a credentialing entity may immediately discharge or transfer a resident under any of the following circumstances:

(a) The discharge or transfer is necessary for the resident's welfare.

(b) The resident's needs cannot be met at the recovery residence.

(c) The health and safety of other residents or recovery residence employees is at risk or would be at risk if the resident continues to live at the recovery residence.

(12) This section does not prohibit a local governmental entity from requiring mandatory certification of recovery residences as part of a reasonable accommodation process to

protect the health and safety of the residents.

(13) By January 1, 2020, the Sober Homes Task Force within the Office of the State Attorney of the Fifteenth Judicial Circuit shall submit a report to the President of the Senate and the Speaker of the House of Representatives which contains recommendations on mandatory statewide certification of recovery residences.

Section 8. Paragraph (d) is added to subsection (2) of section 397.4873, Florida Statutes, and subsection (1) of that section is republished, to read:

397.4873 Referrals to or from recovery residences; prohibitions; penalties.—

(1) A service provider licensed under this part may not make a referral of a prospective, current, or discharged patient to, or accept a referral of such a patient from, a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871.

(2) Subsection (1) does not apply to:

(d) The referral of a patient to, or acceptance of a referral of such a patient from, a recovery residence that has no direct or indirect financial or other referral relationship with the provider and that is democratically operated by its residents pursuant to a charter from an entity recognized or sanctioned by Congress, and where the residence or any resident of the residence does not receive a benefit, directly or indirectly, for the referral.

Section 9. Paragraph (d) of subsection (1) of section


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397.55, Florida Statutes, is amended to read:

397.55 Prohibition of deceptive marketing practices.—

(1) The Legislature recognizes that consumers of substance abuse treatment have disabling conditions and that such consumers and their families are vulnerable and at risk of being easily victimized by fraudulent marketing practices that adversely impact the delivery of health care. To protect the health, safety, and welfare of this vulnerable population, a service provider, an operator of a recovery residence, or a third party who provides any form of advertising or marketing services to a service provider or an operator of a recovery residence may not engage in any of the following marketing practices:

(d) Entering into a contract with a marketing provider who agrees to generate referrals or leads for the placement of patients with a service provider or in a recovery residence through a call center or a web-based presence, unless the contract requires such agreement and the marketing provider ~~service provider or the operator of the recovery residence~~ discloses the following to the prospective patient so that the patient can make an informed health care decision:

1. Information about the specific licensed service providers or recovery residences that are represented by the marketing provider and pay a fee to the marketing provider, including the identity of such service providers or recovery residences; and

2. Clear and concise instructions that allow the prospective patient to easily access lists of licensed service providers and recovery residences on the department website.

Section 10. Subsection (2) of section 435.07, Florida Statutes, is amended to read:

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

(2) Persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c), s. 817.563, s. 831.01, s. 831.02, s. 893.13, or s. 893.147, or any related criminal attempt, solicitation, or conspiracy under s. 777.04, may be exempted from disqualification from employment pursuant to this chapter without application of the waiting period in subparagraph (1)(a)1.

Section 11. Subsection (9) is added to section 553.80, Florida Statutes, to read:

553.80 Enforcement.—

(9) If a single-family or two-family dwelling is used as a recovery residence, as defined in s. 397.311, such dwelling shall be deemed a single-family or two-family dwelling for purposes of the Florida Building Code.

Section 12. Paragraph (e) of subsection (5) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales

surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a


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health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311 ~~s. 397.311(45)~~. Where consistent with these objectives, the plan

may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined before program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any

meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

Section 13. Section 397.416, Florida Statutes, is amended to read:

397.416 Substance abuse treatment services; qualified professional.—Notwithstanding any other provision of law, a person who was certified through a certification process recognized by the former Department of Health and Rehabilitative

Services before January 1, 1995, may perform the duties of a qualified professional with respect to substance abuse treatment services as defined in this chapter, and need not meet the certification requirements contained in s. 397.311(35) ~~s. 397.311(34)~~.

Section 14. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) "Drug rehabilitation program" means a service provider as defined in s. 397.311 which~~, established pursuant to s. 397.311(43), that~~ provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers as defined in s. 397.311 ~~pursuant to s. 397.311(43)~~.


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Section 15. This act shall take effect July 1, 2019.