

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 893 Residential Treatment Programs
SPONSOR(S): Children, Families & Seniors Subcommittee, Melo
TIED BILLS: IDEN./SIM. **BILLS:** SB 1120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N, As CS	Woodruff	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

When children cannot safely remain at home with parents, Florida’s child welfare system finds safe out-of-home placements for children. After a placement assessment to determine the most appropriate out-of-home placement, a child may be placed with a relative, fictive kin, licensed foster parent, in a group home or a residential setting.

The Family First Prevention Services Act (FFPSA) was passed into law as part of the Bipartisan Budget Act on February 9, 2018. The FFPSA reformed the federal child welfare funding streams. In part, the FFPSA limits federal funding for placements in group homes. Specifically, federal reimbursement is only available for the first 14 days in group care unless the child is in a specified setting. One such setting is a Qualified Residential Treatment Program (QRTP), which provides trauma-informed treatment to children with serious emotional or behavioral disorders or disturbances in a residential setting.

In Florida, Residential Treatment Centers (RTC’s) include Specialized Therapeutic Group Homes (STGH), Psychiatric Residential Treatment Facilities (PRTF), and the new federally defined QRTP (licensed as a STGH). Section 39.407(6), F.S., authorizes the Department of Children and Families (DCF) to place a child in its custody in an RTC or a hospital for residential mental health treatment if the DCF believes the child is emotionally disturbed and needs residential treatment. Before the child is admitted to an RTC, he or she must be assessed for suitability for residential treatment by a qualified evaluator (QE) who must be a psychiatrist or a psychologist licensed in Florida who has at least three years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents. Further, the QE cannot have any actual or perceived conflict of interest with any inpatient facility or residential treatment center program.

CS/HB 893 makes changes to s. 39.407, F.S., to align with federal requirements, including:

- Requiring a QE for a STGH and QRTP to be a licensed clinician with at least two years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents, as opposed to stricter QE requirements for placement in a PRTF.
- Requiring DCF to appoint the QE instead of the Agency for Health Care Administration (AHCA).
- Removing AHCA’s rulemaking authority related to the QE network.
- Requiring DCF to provide the guardian ad litem and the court a copy of the assessment within five days after receipt of an assessment.

The bill does not have a fiscal impact on state or local governments.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Title IV-E Funding for Child Welfare

While states bear primary responsibility for child welfare, Congress appropriates funds to states through a variety of funding streams for services to children who have suffered maltreatment. One of these funding streams is established in Title IV-E of the Social Security Act. Title IV-E provides federal reimbursement to states for a portion of the cost of foster care, adoption assistance, and (in states electing to provide this kind of support) kinship guardianship assistance on behalf of each child who meets federal eligibility criteria.

Family First Prevention Services Act

The Family First Prevention Services Act (FFPSA) was passed into law as part of the Bipartisan Budget Act on February 9, 2018.¹ The FFPSA reformed the federal child welfare funding streams. Unlike the previous Title IV-E provisions which primarily funded out-of-home care for families with very low incomes, the FFPSA gives states the ability to earn federal Title IV-E matching funds in support of certain prevention services provided on a time-limited basis that avoid an out-of-home placement for children without regard to family income. States can now receive 50% reimbursement for evidence-based prevention services for children and their families, including mental health, substance abuse, family counseling, and parent skills training.

In order to pay for the increased funding for prevention services, federal funding is limited for children placed in group care. Specifically, Title IV-E reimbursement is only available for the first 14 days unless a child is an FFPSA approved placement, and FFPSA approved group care placements are limited to specialty homes. FFPSA approved placements include:

- Relative/non-relative caregivers.
- Licensed foster care placements.
- Specialized programs, including at-risk human trafficking homes, safe homes, and maternity homes.
- Supervised independent living for youth over 18.
- A new federally defined Qualified Residential Treatment Program (QRTP).

Provisions related to FFPSA took effect in Florida on October 1, 2021. Therefore, the state can no longer receive federal reimbursement for a child in a non-FFPSA approved placement after 14 days.

Department of Children and Families

The Department of Children and Families (DCF) mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.² DCF must develop a strategic plan to fulfill its mission and establish measurable goals, objectives, performance standards, and quality assurance requirements to ensure the department is accountable to taxpayers.³

DCF must also deliver services by contract through private providers to the extent allowed by law and funding.⁴ These private providers include community-based care lead agencies (CBC's) delivering child welfare services.

¹ H.R. 1862 of 2018. P.L. 115-123.

² S. 20.19(1), F.S.

³ *Id.*

⁴ *Id.*

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. DCF and CBC's work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.

DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in his or her environment. When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for children. After a placement assessment to determine the most appropriate out-of-home placement, a child may be placed with a relative, fictive kin, licensed foster parent, in a group home or a residential setting.⁵

Residential Treatment Centers

Residential Treatment Centers (RTCs) are licensed under s. 394.875, F.S., and include hospitals licensed under Ch. 395, F.S., that provide residential mental health treatment. RTC's include Specialized Therapeutic Group Homes (STGH), Psychiatric Residential Treatment Facilities (PRFT), and a new federally defined Qualified Residential Treatment Program (QRTP).

Section 39.407(6), F.S., authorizes DCF to place a child in its custody in an RTC or a hospital for residential mental health treatment if DCF believes the child is emotionally disturbed and needs residential treatment.

Qualified Residential Treatment Programs

A QRTP is a new designation of a non-family-based placement created by the FFPSA. QRTP's provide trauma-informed treatment to children in the child welfare system with serious emotional or behavioral disorders or disturbances in a residential setting. FFPSA requires QRTP's to⁶:

- Be licensed and nationally accredited.⁷
- Use a trauma-informed treatment model.
- Have registered or licensed nursing or licensed clinical staff on-site and available at all times.
- Be inclusive of family members in the treatment process.
- Offer at least six months of support after discharge.

All entities operating as an RTC, including a STGH, must first obtain a license from the Agency for Health Care Administration (AHCA).⁸ In Florida, a QRTP is licensed as a STGH by AHCA and then credentialed as a QRTP by DCF after DCF confirms it meets all federal requirements.⁹

For placement in a QRTP, the FFPSA requires a "qualified individual" to conduct an assessment to determine whether a child's placement in a QRTP is appropriate. A "qualified individual" is a trained professional or licensed clinician who is not employed by the state child welfare agency and who is not connected to, or affiliated with, any placement setting in which children are placed by the state child welfare agency.¹⁰ The Children's Bureau within the United States Department of Health and Human

⁵ R. 65C-28.004, F.A.C.

⁶ H.R. 1862 of 2018. P.L. 115-123; 42 U.S.C. §672(g).

⁷ FFPSA requires QRTP's to be accredited by either the Commission on Accreditation of Rehabilitation Facilities; the Joint Commission on Accreditation of Healthcare Organizations; the Commission on Accreditation; or any other independent, not-for-profit accrediting organization approved by the Secretary of the United States Department of Health and Health Services.

⁸ R. 65E-9.003, F.A.C.

⁹ R. 65C-46.021, F.A.C.

¹⁰ S. 39.407(6)(b), F.S.

Services stated that a “qualified individual” could include a licensed social worker or a trained child welfare worker.¹¹

Florida currently has five QRTP providers and a 50-bed capacity.¹²

Suitability Assessments

When a child is in the child welfare system, a Qualified Evaluator (QE), appointed by AHCA, must assess the child in person for suitability before placement in residential treatment, including a QRTP. Section 39.407(6)(b), F.S, requires the QE to be a psychiatrist or a psychologist licensed in Florida and who has at least three years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program.¹³ Florida statutes regarding the QE qualifications exceed that required by the FFPSA for QRTP placements.

Pursuant to s. 39.407(6)(c), F.S., the QE must conduct a personal examination and assessment of the child and make written findings that:

- The child appears to have an emotional disturbance serious enough to require residential treatment.
- The child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.
- All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable.

Immediately upon placing the child in an RTC, DCF must notify and provide a copy of the assessment to the guardian ad litem and the court having jurisdiction over the child.¹⁴

Children whom DCF believes would be best served by residential treatment have to wait for an appointment with a QE so an assessment can be completed.¹⁵ At this time, there are only 18 QE’s statewide, and providers estimate 400 children need a suitability assessment for placement in a QRTP.¹⁶

Management of the QE Network

The QE Network contract is held by Magellan Health and was originally managed by AHCA.¹⁷ In 2016, the Legislature required AHCA to assign all rights, obligations, and other interest under the contract pertaining to the QE Network services to DCF.¹⁸ Effective July 1, 2016, DCF assumed the Magellan Health contract from AHCA and it is now managed by DCF.¹⁹ The Legislature did not amend s. 39.407(6)(b), F.S., to reflect this change, and thus the statute still requires AHCA to appoint the QE’s. AHCA continues to have statutory authority to adopt rules for the registration of and fee schedule for QE’s.

Effect of Proposed Changes

¹¹ ACYF-CB-PI-18-07, p. 10-11.

¹² Email from John Paul Fiore, Legislative Director, Florida Department of Children and Families, Re; QRTPs, Jan. 20, 2022 (on file with the Children, Families, and Seniors Subcommittee).

¹³ S. 39.407(6)(b), F.S.

¹⁴ *Supra* note 10.

¹⁵ Florida Department of Children and Families, *Agency Bill Analysis for HB 893* (Dec. 10, 2021).

¹⁶ *Id.*

¹⁷ Magellan Healthcare, Qualified Evaluator Network (QEN), <https://www.magellanofflorida.com/documents/2019/09/florida-qen-overview.pdf> (last visited Jan. 20, 2022).

¹⁸ Ch. No. 2016-80, L.O.F.

¹⁹ *Supra* note 19.

CS/HB 893 makes changes to Florida law to align with the new requirements of the FFPSA and maximize federal funding.

The bill amends s. 39.407, F.S., to differentiate between Psychiatric Residential Treatment Facilities (PRTF) and Specialized Therapeutic Group Homes (STGH)/Qualified Residential Treatment Programs (QRTP) by setting different requirements for placement assessments. Specifically, the bill amends the definition in s. 39.407(6)(a), F.S., of “residential treatment” or “residential treatment program” to include “therapeutic group home” and distinguishes it from a PRTF licensed under s. 394.875, F.S., or a hospital licensed under Ch. 395, F.S. Under the bill, a “therapeutic group home” is a 24-hour residential program providing community-based mental health treatment and mental health support services to children who meet the criteria in s. 394.492 (5) or (6) in a nonsecure, homelike setting. Distinguishing STGH’s from other types of residential treatment allows for a separate and less intrusive assessment prior to placement in the residential setting.

The bill requires a QE for a STGH (this includes a QRTP which is licensed as a STGH) to be a psychiatrist, psychologist or a mental health counselor licensed in Florida with at least two years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents, as opposed to the stricter requirements for a PRTF. This will increase the pool of QE beyond the 18 currently used for PRTF suitability assessments and create a larger recruitment pool for STGH/QRTP assessors. The third-party vendor contracted by the DCF for the management of the QE Network estimates this change will increase the pool of potential QE’s by approximately 2,000.²⁰

The bill amends s. 39.407(6)(b), F.S., to require DCF, as opposed to AHCA, to appoint the QE. It also removes AHCA’s rulemaking authority related to the QE Network.

The bill amends s. 39.407(6)(c), F.S., to remove the requirement that the QE examination of the child must be a personal examination. This will allow the examination by the QE to be through telehealth.

The bill amends s. 39.407(6)(d), F.S., to require DCF to provide the guardian ad litem and the court a copy of the assessment within five days of DCF’s receipt of the assessment. DCF will still be required to notify the guardian ad litem and the court when the child is placed in an RTC but gives more time to provide a copy of the assessment.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amending s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requiring child custody.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

²⁰ *Supra* note 15.

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 effect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DCF has sufficient rulemaking authority to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Children, Families & Seniors Subcommittee adopted an amendment to the bill. The amendment removed the increase of bed capacity for a TGH, leaving the statutory cap at 14 beds. It also included psychiatrists licensed as osteopathic physicians as those who may be appointed as a QE.

The bill was reported favorably as amended. The analysis is drafted to the amended bill as passed by the Children, Families & Seniors Subcommittee.