

## NOTICE OF PROPOSED RULE

### DEPARTMENT OF CHILDREN AND FAMILIES Office of Substance Abuse and Mental Health

RULE NO.:      RULE TITLE:

#### **65E-5.350      Eligibility Criteria and Procedures for Designation of Baker Act Receiving Facilities.**

PURPOSE AND EFFECT: Amendments align the eligibility criteria and procedures for designation as a Baker Act receiving facility with current law, practice, and policies.

SUMMARY: Amendments include: (1) removes duplicative language that is in statute, (2) clarifies language to make clear, (3) adds collection of data, (4) incorporates form CF-MH 3125, Application for Designation as a Baker Act Receiving Facility, and (5) allows the Department and community to plan for closures to reduce and minimize service interruption.

#### SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department used a checklist to conduct an economic analysis and determine if there is an adverse impact or regulatory costs associated with this rule that exceeds the criteria in section 120.541(2)(a), F.S. Based upon this analysis, the Department has determined that the proposed rule is not expected to require legislative ratification.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 394.461(6)

LAW IMPLEMENTED: 394.461

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Elizabeth Floyd. Elizabeth can be reached at [Elizabeth.Floyd@myflfamilies.com](mailto:Elizabeth.Floyd@myflfamilies.com).

THE FULL TEXT OF THE PROPOSED RULE IS:

#### **65E-5.350 Eligibility Criteria and Procedures for Designation of Baker Act Receiving Facilities.**

(1) Facilities shall not begin operations as a Baker Act receiving facility until licensed by AHCA and designated in accordance with this rule chapter and with Chapters 394 or 395, F.S. General Provisions. Pursuant to Sections 394.455(26) and 394.461, F.S., only facilities designated by the department are permitted to involuntarily hold and

~~treat persons for a mental illness, except as required by 42 USC 1395 for all hospitals providing emergency services for access, assessment, stabilization and transfer.~~

~~(2) Designation as a private receiving or treatment facility shall not entitle the facility to receive any funding appropriated for the Baker Act. Such funding is based solely on a contract between the department and the facility, specifically for this purpose.~~

~~(2)(3) Two types of licensed civil facilities are authorized to provide acute psychiatric treatment and are eligible to apply for designation as receiving facilities. Since designation to receive persons under Chapter 394, Part I, F.S., does not distinguish between the capacity to serve adults and minors, All all designated facilities are required to provide emergency services, consistent with their facility's licensure to individuals persons regardless of age, except as provided for under subsection (7) (4), of this rule.~~

~~(a) Hospitals licensed under the authority of Chapter 395, F.S., to provide psychiatric care may be designated as either public or private receiving facilities.~~

~~(b) Facilities licensed under the provisions of Chapter 394, Part IV, F.S., shall only be designated as public receiving facilities and may include only crisis stabilization units (CSU) and children's crisis stabilization units (CCSU). Short-term residential treatment facilities (SRT) are not free-standing emergency care units and may only be designated collectively with a CSU or CCSU as part of a public receiving facility.~~

(3) The following types of facilities are authorized to provide acute psychiatric treatment and are eligible to apply for designation as receiving facilities:

(a) Hospitals;

(b) Crisis Stabilization Units (CSU);

(c) Children's Crisis Stabilization Units (CCSU); and

(d) Short-term Residential Treatment Facilities (SRT).

(4) Designated Baker Act receiving facilities shall contribute data to the Florida Health Information's Exchange Encounter Notification Services through AHCA.

(5) SRT facilities may be designated as a receiving facility if they are connected to a county or regional Behavioral Health Receiving System, and are programmatically integrated with a designated CSU or CCSU.

~~(4) Specific Circumstances for Designation. Pursuant to the exceptions authorized under Section 394.462(3), F.S., for transportation purposes, and at the discretion of the department's district or regional office with the~~

~~approval of the mental health and substance abuse program supervisor, a facility designation may be modified or restricted to specify services for just adults or for just children, consistent with its license and subject to inclusion and subsequent approval by required parties as part of an approved transportation exemption plan.~~

~~(6)(5) Application and Supporting Documentation for Designation as a Receiving Facility. In order to apply for designation as a receiving facility, An~~ an applicant must complete and submit mandatory form CF-MH 3125, ~~(insert date) Feb. 05, “Application for Designation as a Baker Act Receiving Facility,” which is hereby incorporated by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXX>. Applications may be submitted through the Department’s statewide electronic licensing and designation system.~~ may be obtained in accordance with Rule 65E-5.120, F.A.C., of this rule chapter. Required application information includes:

~~(a) A copy of the facility’s license issued pursuant to Chapter 394 or 395, F.S., evidencing its eligibility to apply for designation;~~

~~(b) A current certificate of good standing for the applicant organization issued by the Florida Secretary of State;~~

~~(c) Documentation of the applicant’s governing authority action authorizing the application for designation;~~

~~(d) Description of proposed psychiatric services including any distinct programs to be provided to each of the following consumer age groups, and the projected numbers of persons to be served in each following group:~~

- ~~1. Minors below 10 years of age,~~
- ~~2. Minors between the ages of 10 to 17 years,~~
- ~~3. Adults,~~
- ~~4. Persons 60 or more years of age; and,~~
- ~~5. Other specific populations.~~

~~(e) The corresponding street address for each reception and treatment location for the above services must be provided. Designation is limited to only the locations specified in the application and approved by the department; and,~~

~~(f) Documentation of community need for maintaining or expanding the present level of designated facilities’ services to meet the existing need, and why the applicant is best suited to meet this need.~~

~~1. The information may address the public’s need for specific services for minors, aged, blind or hearing-impaired persons. Evidence of such need may include: Certificate of Need data and other information published by the Agency for Health Care Administration, the organization’s or community’s utilization of available or licensed~~

~~bed capacity, geographical accessibility information, input from local governmental agencies, or information on the specific needs of persons if the particular specialty services offered are accredited or certified by a nationally recognized body for that specific population or service.~~

~~2. The applicant shall describe local need and accommodation of that need for indigent and low income individuals and families receiving the facility's services. The applicant shall describe how it shall protect economically vulnerable persons received for involuntary examination or treatment from exorbitant charges and billings for services. A statement comparing representative facility charges and billings for individuals who are uninsured or without a third party payer who are held under the provisions of the Baker Act to otherwise similar representative charges and billings for group health care members and insurers shall be included.~~

~~3. The applicant shall describe local need and accommodation of that need for indigent and low income individuals and families being discharged from the facility in need of continuing psychotropic medications. The applicant shall describe how it shall directly provide, or otherwise assist the person in ensuring continuity of availability of necessary psychotropic medications until a scheduled aftercare psychotropic medication appointment.~~

~~(g) Documentation of key facility protocols to assure all involved practitioners and staff are knowledgeable of, and implement, person's legal rights, key psychiatric care, records standards, complaint reporting, investigation and reviews to maintain a consistently high level of compliance with applicable Baker Act laws, ethical principles, and rights protections;~~

~~(h) Description of how the facility's physical structure, staffing and policies offers frequent, if not daily, opportunity for persons to have exercise, fresh air and sunshine, except as individually restricted and documented in the person's clinical record and within the physical limitations of the facility;~~

~~(i) Description of how the facility's discharge planning policies provide for continuity of psychotropic medication availability until post discharge follow up services are scheduled; and,~~

~~(j) For general hospitals, a description of the means utilized to create or approximate a distinct psychiatric emergency reception and triage area that minimizes individual's exposure to undue and exacerbating environmental stresses while awaiting or receiving services.~~

~~(6) Application Process for Designation. All facilities desiring to obtain, or to retain, designation as a receiving facility must complete and submit mandatory form CF-MH 3125, "Application for Designation as a Receiving Facility," as referenced in subsection 65E 5.350(5), F.A.C., for departmental review. All receiving facility~~

designations shall be subject to departmental review and authorization in accordance with the provisions of Chapter 394, Part I, F.S., and this chapter after receipt of the application.

(a) The department's district or regional office is responsible for receipt of the application, reviewing the application, requesting additional information as needed, verifying essential information, and forwarding the information along with the recommendation of the mental health and substance abuse program supervisor to the Secretary for final action. Applications received that are incomplete will be returned by certified mail with a letter informing the applicant of missing items. The district or region will seek and review pertinent information from any source such as:

1. Accreditation status and submission of the latest survey report of any applicable accrediting bodies;
2. Relevant history of compliance with the Baker Act and other related protection laws protecting persons served by mental health facilities;
3. Agency for Health Care Administration (AHCA) licensure reports and complaint investigation findings against the facility or professionals associated with the facility;
4. Actions, findings or reports of the Florida Local Advocacy Council, and other district or regional consumer complaint offices;
5. Florida Abuse Hotline receipt, or lack or receipt, of complaints and actions;
6. Actions initiated by any state enforcement authority including the Florida Attorney General's Office, the Florida Department of Law Enforcement, the Florida Department of Insurance, and statewide or local State's Attorneys Offices; and,
7. Actions initiated by any federal law enforcement or investigative authority including the federal Department of Health and Human Services, the federal Centers for Medicare and Medicaid Services, and the Federal Bureau of Investigation against the facility, its employees, privileged personnel or contractors, subcontractors, or operators relating to services, billings or operations.

(b) The district or region, upon receipt of a properly completed application, shall schedule and advertise a public meeting for purposes of obtaining public input and information on the initial designation of the applicant.

(c) In meeting the local need for designated facilities, priority shall be given to facilities with management that consistently exhibits high levels of compliance with Chapter 394, Part I, F.S., this rule chapter, and related protection laws in Chapters 395, 415, 458, and 817, F.S., as documented in state agencies' files.

~~(d) The submission of the district or region's recommendation to the Secretary must include a listing of the key information sources and pertinent factors relied upon in making the recommendation and a summary of the comments and information received at the public meeting.~~

~~(e) Within 60 days of receiving the recommendation from the district or region, the Secretary, or the Secretary's designee, will review the district or region recommendation and supporting documentation and will issue final departmental action with regard to the application which may be approved, denied, or returned to the district or region for additional information or processing.~~

~~(f) The designation shall be for 3 years.~~

(7) Application Re-Applications for Renewal of Designation or Change of Address.

(a) ~~An application for renewal designation~~ A re-application must be submitted ~~for re-designation~~ every 3 calendar years, after approval of initial applications or 90 calendar days in advance of the relocation of a facility to a new address. ~~The designation is valid only for the address to which it was issued.~~

(b) ~~The A-renewal application for renewal designation~~ shall be submitted forwarded to the Department ~~department~~ at least 60 calendar ~~90~~ days prior to the expiration of its existing designation.

(c) ~~An application for re-designation~~ A re-application must be submitted by a facility to the Department within 30 calendar days of ~~upon~~ a change of ownership, controlling ownership of the facility or of the contractual management entity for the psychiatric service. ~~Failure to submit notification to the department of changes of controlling ownership or a change in the management entity within 30 days after the change will terminate the facility's designation 60 days after the effective date of the action changing the control of ownership or management.~~

(d) Any change in the name of a facility; that remains under the same ownership and management; must be reported in writing to the Department's ~~department's~~ district or regional office within 30 calendar days after the effective date of the change. Upon receipt of the notification, the Department ~~department~~ will issue a letter confirming receipt of the notification and extending designation until a replacement certificate of designation showing the correct facility name is received by the facility. ~~Failure to provide such notification to the district or region within 30 days of the change will result in the withdrawal of the designation upon the expiration of the 60th day following the facility name change.~~

(8) Certificate of Designation.

(a) Upon approval by the Secretary or ~~the Secretary's his or her~~ designee, the ~~Department~~ department shall issue a Certificate of Designation ~~certificate of designation~~ which shall include the following information on ~~its~~ the face of ~~the Certificate of Designation~~:

1. Effective ~~commencement~~ date and expiration date,
2. Name of the owner and licensee as stated on the facility license issued by AHCA ~~the Agency for Health Care Administration~~; and,
3. Street address of where services are provided.

(b) The certificate shall be prominently displayed to the general public at the service site. ~~Designation provided by this certificate is invalid if the information on the certificate is not correct or the information provided in the submitted application is false or misleading.~~

(9) Facilities shall provide the Department with a written notice 120 days prior to surrendering their designation and shall include a written transition plan to minimize disruptions in access to crisis care in the community. At a minimum the transition plan shall address the following:

- (a) The specific reasons for surrendering the designation as a receiving facility;
  - (b) Collaborative plan with the regional managing entity and surrounding counties to ensure continuity of crisis care in the community;
  - (c) The date when the receiving facility will no longer accept admissions for Baker Act examinations;
  - (d) Identification of any agreements with other receiving facilities to accept transfers or expand bed capacity;
- and
- (e) Identification of any agreements with other community providers to admit individuals to hospital diversion programs such as short-term residential treatment, Community Action Teams, or Florida Assertive Community Treatment.

Rulemaking Authority 394.461(6) ~~394.461(5)~~ FS. Law Implemented ~~394, Part I, IV, 394.455(26), 394.461, 394.461(4), 394.462(3), 395, 415, 458, 817~~ FS. History—New 11-29-98, Amended 4-4-05. Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Courtney Smith

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Shevaun L. Harris

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: 3.23.23

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: