Chapter 4: Florida Law for the Social Worker, Mental Health Counselor, and Marriage and Family Therapist

3 CE Hours

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Learning objectives

- Explain the difference between definition and duties of the clinical social worker and certified master social worker.
- List and discuss the 2013 additions to Florida Statutes that inform social work, mental health counseling and marriage and family therapy with dependent children.
- Define four elements in the Florida Statute that direct the practice of clinical social work.
- Identify six areas of practice included in the Florida Statute definition of marriage and family therapy.
- Explain six duties listed in the Florida Statute definition of mental health counseling.
- Compare and contrast the services of the marriage and family therapist, mental health counselor and social worker.
- Identify five social work, mental health counseling and marriage and family therapy services included in the legislative intent of the Florida Mental Health Act.
- Identify and discuss three key elements in the statutes for the Right to Individual Dignity statute.
- According to Florida Statutes, identify and give three examples of social work, counselor and therapist collaboration in the service delivery for Exceptional Student Education.
- Define the goals of the Quality of Treatment statute and three methods identified to meet those goals.
- List and define five infractions from the Florida Statutes on discipline in the three professions covered in this course and the penalties for each.
- Identify five characteristics of quality parenting listed in the Florida Statutes and give five examples of social work, counseling and therapy practice to promote quality parenting.
- List and discuss four duties of the social worker, mental health counselor and marriage and family therapist within the Nancy C. Detert Common Sense and Compassion Independent Living Act.
- Under the Procedures and Jurisdiction section of the Independent Living Act, identify three actions the court may take and explain the circumstances to warrant that action.
- Describe five situations listed in the Florida Statutes that indicate the need for disclosure of information related to “duty to warn,” and explain five strategies to address these in practice.
- List and explain five potential liability issues inherent in the use of technology for long-distance therapy and supervision.
- Identify the AAMFT, NASW, and AMHCA guidelines for information disclosure for “duty to warn,” and compare and contrast them to the Florida Statutes.
- Compare and contrast the Florida Statutes and the HIPAA Privacy Rule on the use of technology and give three examples from each.
- List the guidelines from the AAMFT, NASW and AMHCA codes of ethics on the use of technology in service delivery and as compared to the directives in the Florida Statutes.

Introduction

The Florida Statutes are state laws that are arranged by a titles, chapters, parts, and sections. They are considered permanent, but are reviewed and updated annually and may be amended, altered, or repealed.

Two significant laws were passed in 2013 that affect social work, counseling and therapy with dependent children that took effect in 2014. The profession and practice of social work, mental health counseling and marriage and family therapy is addressed in numerous Florida law statutes, and many updates to the laws involve the inclusion of social workers, mental health counselors, and marriage and family therapists for implementation. This mirrors the recent passage of the Affordable Care Act, which defines the important role of these professions in the Accountable Care Organization and the HEARTH Act Continuum of Care. Because the statutes may be updated each year, they should be reviewed annually, which is easily done because they are arranged by subject and year. It is important to check the date when a new statute goes into effect because it may necessitate changes in policies, procedures, practice and service delivery.

In the past, liability cases have revolved around confidentiality, dual relationship boundary issues, and information storage and transmission. Many ethical violations resulting in liability cases against social workers, counselors and therapists relate to boundary issues involving sexual misconduct.

The increasing use of electronics in conducting services and supervision, which includes transmitting information using technology, requires the practitioner to stay current on changes in Florida law and the Code of Ethics of the governing boards that inform their profession. Legislators in Florida and the national governing boards are in the process of writing laws to keep pace with new technology systems and policies to protect clients’ privacy.

Florida law must be studied carefully as it relates to the national boards that govern these professions including NASW, AMHCA, AAMFT and the ASWB ethics codes and the HIPAA Privacy Rule. The professions of social work, mental health counseling and marriage and family therapy in Florida are governed by a wide range of statutes that cover practice in schools, nursing homes, homeless shelters, outreach in communities, agencies for individuals with disabilities, hospice agencies, mental health and rehab facilities, public, private, charitable and non-profit organizations.

Social workers, mental health counselors and marriage and family therapists practice in their area of competency, and in some cases there are a number of statutes that apply to their work. Multiple statutes govern the practice of these professions and their agency supervisors who direct staff as they carry out their duties in administration, education, and support. The statutes inform the way the administrators manage funds and resources for the agency, and their work as advocates and community health team members.
Chapter 491 Clinical Counseling, and Psychotherapy Services

The greatest number of Florida Statutes related to social work, mental health counseling and marriage and family therapy are found in this title and chapter.

491.003 Definitions. —As used in this chapter:
(1) “Board” means the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.
(2) “Clinical social worker” means a person licensed under this chapter to practice clinical social work.
(3) “Clinical social work experience” is defined as a period during which the applicant provides clinical social work services, including assessment, diagnosis, treatment, and evaluation of clients; provided that at least 50 percent of the hours worked consist of providing psychotherapy and counseling services directly to clients.
(4) “Department” means the Department of Health.
(5) “Marriage and family therapist” means a person licensed under this chapter to practice marriage and family therapy.
(6) “Mental health counselor” means a person licensed under this chapter to practice mental health counseling.
(7) The “practice of clinical social work” is defined as the use of scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior, based on the person-in-situation perspective of psychosocial development, normal and abnormal behavior, psychopathology, unconscious motivation, interpersonal relationships, environmental stress, differential assessment, differential planning, and data gathering. The purpose of such services is the prevention and treatment of undesired behavior and enhancement of mental health. The practice of clinical social work includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of clinical social work includes but is not limited to, psychotherapy, hypnotherapy, and sex therapy. The practice of clinical social work also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, or substance abuse. The practice of clinical social work may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions.
   (a) Clinical social work may be rendered to individuals, including individuals affected by the termination of marriage, and to marriages, couples, families, groups, organizations, and communities.
   (b) The use of specific methods, techniques, or modalities within the practice of clinical social work is restricted to clinical social workers appropriately trained in the use of such methods, techniques, or modalities.
   (c) The terms “diagnose” and “treat,” as used in this chapter, when considered in isolation or in conjunction with any provision of the rules of the board, shall not be construed to permit the performance of any act which clinical social workers are not educated and trained to perform, including, but not limited to, admitting persons to hospitals for treatment of the foregoing conditions, treating persons in hospitals without medical supervision, prescribing medicinal drugs as defined in chapter 465, authorizing clinical laboratory procedures pursuant to chapter 483, or radiological procedures, or use of electroconvulsive therapy. In addition, this definition shall not be construed to permit any person licensed, provisionally licensed, registered, or certified pursuant to this chapter to describe or label any test, report, or procedure as “psychological,” except to relate specifically to the definition of practice authorized in this subsection.
(8) The “practice of marriage and family therapy” is defined as the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems, including the context of marital formation and dissolution, and is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques. The practice of marriage and family therapy includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of marriage and family therapy includes but is not limited to, marriage and family therapy, psychotherapy, including behavioral family therapy, hypnotherapy, and sex therapy. The practice of marriage and family therapy also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, or substance abuse. The practice of marriage and family therapy may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions.
   (a) Marriage and family therapy may be rendered to individuals, including individuals affected by termination of marriage, to couples, whether married or unmarried, to families, or to groups.
   (b) The use of specific methods, techniques, or modalities within the practice of marriage and family therapy is restricted to marriage and family therapists appropriately trained in the use of such methods, techniques, or modalities.
   (c) The terms “diagnose” and “treat,” as used in this chapter, when considered in isolation or in conjunction with any provision of the rules of the board, shall not be construed to permit the performance of any act which marriage and family therapists are not educated and trained to perform, including, but not limited to, admitting persons to hospitals for treatment of the foregoing conditions, treating persons in hospitals without medical supervision, prescribing medicinal drugs as defined in chapter 465, authorizing clinical laboratory procedures pursuant to chapter 483, or radiological procedures, or use of electroconvulsive therapy. In addition, this definition shall not be construed to permit any person licensed, provisionally licensed, registered, or certified pursuant to this chapter to describe or label any test, report, or
(d) The definition of “marriage and family therapy” contained in this subsection includes all services offered directly to the general public or through organizations, whether public or private, and applies whether payment is requested or received for services rendered.

(9) The “practice of mental health counseling” is defined as the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development and is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. The practice of mental health counseling includes methods of a psychological nature used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders (whether cognitive, affective, or behavioral), behavioral disorders, interpersonal relationships, sexual dysfunction, alcoholism, and substance abuse. The practice of mental health counseling includes, but is not limited to, psychotherapy, hypnotherapy, and sex therapy. The practice of mental health counseling also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), behavioral disorders, sexual dysfunction, alcoholism, or substance abuse. The practice of mental health counseling may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions.

(a) Mental health counseling may be rendered to individuals, including individuals affected by the termination of marriage, and to couples, families, groups, organizations, and communities.

(b) The use of specific methods, techniques, or modalities within the practice of mental health counseling is restricted to mental health counselors appropriately trained in the use of such methods, techniques, or modalities.

(c) The terms “diagnose” and “treat,” as used in this chapter, when considered in isolation or in conjunction with any provision of the rules of the board, shall not be construed to permit the performance of any act which mental health counselors are not educated and trained to perform, including, but not limited to, admitting persons to hospitals for treatment of the foregoing conditions, treating persons in hospitals without medical supervision, prescribing medicinal drugs as defined in chapter 465, authorizing clinical laboratory procedures pursuant to chapter 483, or radiological procedures, or use of electroconvulsive therapy. In addition, this definition shall not be construed to permit any person licensed, provisionally licensed, registered, or certified pursuant to this chapter to describe or label any test, report, or procedure as “psychological,” except to relate specifically to the definition of practice authorized in this subsection.

(d) The definition of “mental health counseling” contained in this subsection includes all services offered directly to the general public or through organizations, whether public or private, and applies whether payment is requested or received for services rendered.

(10) “Provisional marriage and family therapist licensee” means a person provisionally licensed under this chapter to provide marriage and family counseling services under supervision.

(11) “Provisional marriage and family therapist licensee” means a person provisionally licensed under this chapter to provide marriage and family therapy services under supervision.

(12) “Provisional mental health counselor licensee” means a person provisionally licensed under this chapter to provide mental health counseling services under supervision.

(13) “Psychotherapist” means a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to this chapter.

(14) “Registered clinical social worker intern” means a person registered under this chapter who is completing the postgraduate clinical social work experience requirement specified in s. 491.005(1)(c).

(15) “Registered marriage and family therapist intern” means a person registered under this chapter who is completing the post-master’s clinical experience requirement specified in s. 491.005(3)(c).

(16) “Registered mental health counselor intern” means a person registered under this chapter who is completing the post-master’s clinical experience requirement specified in s. 491.005(4)(c).

(17) “Social worker” means a person who has a bachelor’s, master’s, or doctoral degree in social work.

491.004 Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. —

(1) There is created within the department the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling composed of nine members appointed by the Governor and confirmed by the Senate.

(2) —

(a) Six members of the board shall be persons licensed under this chapter as follows:

1. Two members shall be licensed practicing clinical social workers.
2. Two members shall be licensed practicing marriage and family therapists.
3. Two members shall be licensed practicing mental health counselors.

(b) Three members shall be citizens of the state who are not and have never been licensed in a mental health-related profession and who are in no way connected with the practice of any such profession.

(3) No later than January 1, 1988, the Governor shall appoint nine members of the board as follows:

(a) Three members for terms of 2 years each.
(b) Three members for terms of 3 years each.
(c) Three members for terms of 4 years each.

(4) As the terms of the initial members expire, the Governor shall appoint successors for terms of 4 years; and those members shall serve until their successors are appointed.

(5) The board shall adopt rules pursuant to ss. 120.53(1) and 120.54 to implement and enforce the provisions of this chapter.

(6) All applicable provisions of chapter 456 relating to activities of regulatory boards shall apply to the board.

491.005 Licensure by examination. —

(1) Clinical social work. — Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the American Association of State Social Worker’s Boards or a similar national organization, the department shall issue a license as a clinical social worker to an applicant who is an accredited agency recognized by the United States Department of
1. Has had not less than 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 prior to commencing practice. If the applicant’s graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b) 2., the supervised experience requirement must take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. The experience requirement may be met by work performed on or off the premises of the supervising clinical social worker or the equivalent, provided the off-premises work is not the independent private practice rendering of clinical social work that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.

2. The applicant’s graduate program must have emphasized direct clinical patient or client health care services, including, but not limited to, coursework in clinical social work, psychiatric social work, medical social work, social casework, psychotherapy, or group therapy. The applicant’s graduate program must have included all of the following coursework:

(a) A supervised field placement that was part of the applicant’s advanced concentration in direct practice, during which the applicant provided clinical services directly to clients.

(b) Completion of 24 semester hours or 32 quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, including a minimum of one course in psychopathology, and no more than one course in research, taken in a school of social work accredited or approved pursuant to subparagraph 1.

(c) Has had not less than 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 prior to commencing practice. If the applicant’s graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b) 2., the supervised experience requirement must take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. The experience requirement may be met by work performed on or off the premises of the supervising clinical social worker or the equivalent, provided the off-premises work is not the independent private practice rendering of clinical social work that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.

(d) Has passed a theory and practice examination provided by the department for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

2. Clinical social work. —

(a) Notwithstanding the provisions of paragraph (1)(b), coursework which was taken at a baccalaureate level shall not be considered toward completion of education requirements for licensure unless an official of the graduate program certifies in writing on the graduate school’s stationery that a specific course, which students enrolled in the same graduate program were ordinarily required to complete at the graduate level, was waived or exempted based on completion of a similar course at the baccalaureate level. If this condition is met, the board shall apply the baccalaureate course named toward the education requirements.

(b) An applicant from a master’s or doctoral program in social work which did not emphasize direct patient or client services may complete the clinical curriculum content requirement by returning to a graduate program accredited by the Council on Social Work Education or the Canadian Association of Schools of Social Work; or to a clinical social work graduate program with comparable standards, in order to complete the education requirements for examination. However, a maximum of 6 semester or 9 quarter hours of the clinical curriculum content requirement may be completed by credit awarded for independent study coursework as defined by board rule.

3. Marriage and family therapy. — Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual cost to the department for the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or similar national organization, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies:

(a) Has made application therefore and paid the appropriate fee.

(b) Thirty-six semester hours or 48 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level course credits in each of the following nine areas: dynamics of marriage and family systems; marriage therapy and counseling theory and techniques; family therapy and counseling theory and techniques; individual human development theories throughout the life cycle; personality theory or general counseling theory and techniques; psychopathology; human sexuality theory and counseling techniques; psychosocial theory; and substance abuse theory and counseling techniques. Courses in research, evaluation, appraisal, assessment, or testing theories and procedures; thesis or dissertation work; or practicum, internships, or fieldwork may not be applied toward this requirement.

(c) A minimum of one graduate-level course of 3 semester hours or 4 quarter hours in diagnosis, appraisal, assessment, and testing for individual or interpersonal disorder or dysfunction; and a minimum of one 3-semester-hour or 4-quarter-hour graduate-level course in behavioral research which focuses on the interpretation and application of research data as it applies to clinical practice.
Credit for thesis or dissertation work, practicum, internships, or fieldwork may not be applied toward this requirement.

d. A minimum of one supervised clinical practicum, internship, or field experience in a marriage and family counseling setting, during which the student provided 180 direct client contact hours of marriage and family therapy services under the supervision of an individual who met the requirements for supervision under paragraph (c). This requirement may be met by a supervised practice experience which took place outside the academic arena, but which is certified as equivalent to a graduate-level practicum or internship program which required a minimum of 180 direct client contact hours of marriage and family therapy services currently offered within an academic program of a college or university accredited by an accrediting agency approved by the United States Department of Education, or an institution which is publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada or a training institution accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education. Certification shall be required from an official of such college, university, or training institution.

2. If the course title which appears on the applicant’s transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

The required master’s degree must have been received in an institution of higher education which at the time the applicant graduated was: fully accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation; publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada; or an institution of higher education located outside the United States and Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The burden of establishing that the requirements of this provision have been met shall be upon the applicant, and the board shall require documentation, such as, but not limited to, an evaluation by a foreign equivalency determination service, as evidence that the applicant’s graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master’s degree from a program, which did not emphasize marriage and family therapy, may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education recognized by the United States Department of Education.

(c) Has had not less than 2 years of clinical experience during which 50 percent of the applicant’s clients were receiving marriage and family therapy services, which must be at the post-master’s level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 prior to commencing practice. If a graduate has a master’s degree with a major emphasis in marriage and family therapy or a closely related field that did not include all the coursework required under sub-subparagraphs (b)1.a.-c., credit for the post-master’s level clinical experience shall not commence until the applicant has completed a minimum of 10 of the courses required under sub-subparagraphs (b)1.a.-c., as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 3 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. The clinical experience requirement may be met by work performed on or off the premises of the supervising marriage and family therapist or the equivalent, provided the off-premises work is not the independent private practice rendering of marriage and family therapy services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.

(d) Has passed a theory and practice examination provided by the department for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(f) For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure shall not exceed those stated in this subsection.

(4) Mental health counseling. — Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors or a similar national organization, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(a) Has made application therefore and paid the appropriate fee.

(b) Has had at least 2 years of clinical experience during which at least 60 semester hours or 80 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 3 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. The clinical experience requirement may be met by work performed on or off the premises of the supervising marriage and family therapist or the equivalent, provided the off-premises work is not the independent private practice rendering of marriage and family therapy services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.

(c) Has had not less than 2 years of clinical experience during which 50 percent of the applicant’s clients were receiving marriage and family therapy services, which must be at the post-master’s level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 prior to commencing practice. If a graduate has a master’s degree with a major emphasis in marriage and family therapy or a closely related field that did not include all the coursework required under sub-subparagraphs (b)1.a.-c., credit for the post-master’s level clinical experience shall not commence until the applicant has completed a minimum of 10 of the courses required under sub-subparagraphs (b)1.a.-c., as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 3 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. The clinical experience requirement may be met by work performed on or off the premises of the supervising marriage and family therapist or the equivalent, provided the off-premises work is not the independent private practice rendering of marriage and family therapy services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.

(d) Has passed a theory and practice examination provided by the department for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(f) For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure shall not exceed those stated in this subsection.

(4) Mental health counseling. — Upon verification of documentation and payment of a fee not to exceed $200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors or a similar national organization, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(a) Has made application therefore and paid the appropriate fee.

(b) Has had at least 2 years of clinical experience during which at least 60 semester hours or 80 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 3 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. The clinical experience requirement may be met by work performed on or off the premises of the supervising marriage and family therapist or the equivalent, provided the off-premises work is not the independent private practice rendering of marriage and family therapy services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.

(c) Has had not less than 2 years of clinical experience during which 50 percent of the applicant’s clients were receiving marriage and family therapy services, which must be at the post-master’s level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 prior to commencing practice. If a graduate has a master’s degree with a major emphasis in marriage and family therapy or a closely related field that did not include all the coursework required under sub-subparagraphs (b) 1.a.-c., credit for the post-master’s level clinical experience shall not commence until the applicant has completed a minimum of 10 of the courses required under sub-subparagraphs (b)1.a.-c., as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 3 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. The clinical experience requirement may be met by work performed on or off the premises of the supervising marriage and family therapist or the equivalent, provided the off-premises work is not the independent private practice rendering of marriage and family therapy services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.

(d) Has passed a theory and practice examination provided by the department for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(f) For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure shall not exceed those stated in this subsection.
2. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; counseling in community settings; and substance abuse. Courses in research, thesis or dissertation work, practicum, internships, or fieldwork may not be applied toward this requirement.

b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in legal, ethical, and professional standards issues in the practice of mental health counseling, which includes goals, objectives, and practices of professional counseling organizations, codes of ethics, legal considerations, standards of preparation, certifications and licensing, and the role identity and professional obligations of mental health counselors. Courses in research, thesis or dissertation work, practicum, internships, or fieldwork may not be applied toward this requirement.

c. The equivalent, as determined by the board, of at least 1,000 hours of university-sponsored supervised clinical practicum, internship, or field experience as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master’s clinical experience requirement.

2. If the course title which appears on the applicant’s transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education which at the time the applicant graduated was: fully accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation; publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada; or an institution of higher education located outside the United States and Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as mental health counselors. The burden of establishing that the requirements of this provision have been met shall be upon the applicant, and the board shall require documentation, such as, but not limited to, an evaluation by a foreign equivalency determination service, as evidence that the applicant’s graduate degree program and education were equivalent to an accredited program in this country.

(c) Has had not less than 2 years of clinical experience in mental health counseling, which must be at the post-master’s level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 prior to commencing practice. If a graduate has a master’s degree with a major related to the practice of mental health counseling that did not include all the coursework required under sub-subparagraphs (b)1.a.-b., credit for the post-master’s level clinical experience shall not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraphs (b)1.a.-b., as determined by the board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement. The clinical experience requirement may be met by work performed on or off the premises of the supervising mental health counselor or the equivalent, provided the off-premises work is not the independent private practice rendering of services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.

(d) Has passed a theory and practice examination provided by the department for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(5) Internship. — An individual who is registered as an intern and has satisfied all of the educational requirements for the profession for which the applicant seeks licensure shall be certified as having met the educational requirements for licensure under this section.

(6) Rules—The board may adopt rules necessary to implement any education or experience requirement of this section for licensure as a clinical social worker, marriage and family therapist, or mental health counselor.

491.009 Discipline. —

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Attempting to obtain, obtaining, or renewing a license, registration, or certificate under this chapter by bribery or fraudulent misrepresentation or through an error of the board or the department.

(b) Having a license, registration, or certificate to practice a comparable profession revoked, suspended, or otherwise acted against, including the denial of certification or licensure by another state, territory, or country.

(c) Being convicted or found guilty of, regardless of adjudication, or having entered a plea of nolo contendere to, a crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession. However, in the case of a plea of nolo contendere, the board shall allow the person who is the subject of the disciplinary proceeding to present evidence in mitigation relevant to the underlying charges and circumstances surrounding the plea.

(d) False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed.

(e) Advertising, practicing, or attempting to practice under a name other than one’s own.
(f) Maintaining a professional association with any person who the applicant, licensee, registered intern, or certificate holder knows, or has reason to believe, is in violation of this chapter or of a rule of the department or the board.

(g) Knowingly aiding, assisting, procuring, or advising any nonlicensed, nonregistered, or uncertified person to hold himself or herself out as licensed, registered, or certified under this chapter.

(h) Failing to perform any statutory or legal obligation placed upon a person licensed, registered, or certified under this chapter.

(i) Willfully making or filing a false report or record; failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record; or inducing another person to make or file a false report or record or to impede or obstruct the filing of a report or record. Such report or record includes only a report or record, which requires the signature of a person licensed, registered, or certified under this chapter.

(j) Paying a kickback, rebate, bonus, or other remuneration for receiving a patient or client, or receiving a kickback, rebate, bonus, or other remuneration for referring a patient or client to another provider of mental health care services or to a provider of health care services or goods; referring a patient or client to oneself for services on a fee-paid basis when those services are already being paid for by some other public or private entity; or entering into a reciprocal referral agreement.

(k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined pursuant to s. 491.0111.

(l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed, registered, or certified under this chapter.

(m) Soliciting patients or clients personally, or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct.

(n) Failing to make available to a patient or client, upon written request, copies of tests, reports, or documents in the possession or under the control of the licensee, registered intern, or certificate holder which have been prepared for and paid for by the patient or client.

(o) Failing to respond within 30 days to a written communication from the department or the board concerning any investigation by the department or the board, or failing to make available any relevant records with respect to any investigation about the licensee’s, registered intern’s, or certificate holder’s conduct or background.

(p) Being unable to practice the profession for which he or she is licensed, registered, or certified under this chapter with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the State Surgeon General, the State Surgeon General’s designee, or the board that probable cause exists to believe that the licensee, registered intern, or certificate holder is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee, registered intern, or certificate holder to submit to a mental or physical examination by psychologists, physicians, or other licensees under this chapter, designated by the department or board. If the licensee, registered intern, or certificate holder refuses to comply with such order, the department’s order directing the examination may be enforced by filing a petition for enforcement in the circuit court in the circuit in which the licensee, registered intern, or certificate holder resides or does business. The licensee, registered intern, or certificate holder against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee, registered intern, or certificate holder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice for which he or she is licensed, registered, or certified with reasonable skill and safety to patients.

(q) Performing any treatment or prescribing any therapy which, by the prevailing standards of the mental health professions in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(r) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee, registered intern, or certificate holder is not qualified by training or experience.

(s) Delegating professional responsibilities to a person whom the licensee, registered intern, or certificate holder knows or has reason to know is not qualified by training or experience to perform such responsibilities.

(t) Violating a rule relating to the regulation of the profession or a lawful order of the department or the board previously entered in a disciplinary hearing.

(u) Failure of the licensee, registered intern, or certificate holder to maintain in confidence a communication made by a patient or client in the context of such services, except as provided in s. 491.0147.

(v) Making public statements which are derived from test data, client contacts, or behavioral research and which identify or damage research subjects or clients.

(w) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The department, or, in the case of psychologists, the board, may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

491.002 Intent. — The Legislature finds that as society becomes increasingly complex, emotional survival is equal in importance to physical survival. Therefore, in order to preserve the health, safety, and welfare of the public, the Legislature must provide privileged communication for members of the public or those acting on their behalf to encourage needed or desired counseling, clinical and psychotherapy services, or certain other services of a psychological nature to be sought out. The Legislature further finds that, since such services assist the public primarily with emotional survival, which in turn affects physical and psychophysical survival, the practice of clinical social work, marriage and family therapy, and mental health counseling by persons not qualified to practice such professions presents a danger to public health, safety, and welfare. The Legislature finds that, to further secure the health, safety, and welfare of the public and also to encourage professional cooperation among all qualified professionals, the Legislature must assist the public in making informed choices of such services by establishing minimum qualifications for entering into and remaining in the respective professions.
491.004 Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. —
(1) There is created within the department the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling composed of nine members appointed by the Governor and confirmed by the Senate.

(2) (a) Six members of the board shall be persons licensed under this chapter as follows:
   1. Two members shall be licensed practicing clinical social workers.
   2. Two members shall be licensed practicing marriage and family therapists.
   3. Two members shall be licensed practicing mental health counselors.
   (b) Three members shall be citizens of the state who are not and have never been licensed in a mental health-related profession and who are in no way connected with the practice of any such profession.

(3) No later than January 1, 1988, the Governor shall appoint nine members of the board as follows:
   (a) Three members for terms of 2 years each.
   (b) Three members for terms of 3 years each.
   (c) Three members for terms of 4 years each.

(4) As the terms of the initial members expire, the Governor shall appoint successors for terms of 4 years; and those members shall serve until their successors are appointed.

(5) The board shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(6) All applicable provisions of chapter 456 relating to activities of regulatory boards shall apply to the board.

(7) The board shall maintain its official headquarters in the City of Tallahassee.

491.0045 Intern registration: requirements. —
(1) Effective January 1, 1998, an individual who intends to practice in Florida to satisfy the postgraduate or post-master’s level experience requirements, as specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register as an intern in the profession for which he or she is seeking licensure prior to commencing the post-master’s experience requirement or an individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the profession for which he or she is seeking licensure prior to commencing the practicum, internship, or field experience.

(2) The department shall register as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern each applicant who the board certifies has:
   (a) Completed the application form and remitted a nonrefundable application fee not to exceed $200, as set by board rule;
   (b) 1. Completed the education requirements as specified in s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which he or she is applying for licensure, if needed; and
      2. Submitted an acceptable supervision plan, as determined by the board, for meeting the practicum, internship, or field work required for licensure that was not satisfied in his or her graduate program.
   (c) Identified a qualified supervisor.

(3) An individual registered under this section must remain under supervision until he or she is in receipt of a license or a letter from the department stating that he or she is licensed to practice the profession for which he or she applied.

(4) An individual who has applied for intern registration on or before December 31, 2001, and has satisfied the education requirements of s. 491.005 that are in effect through December 31, 2000, will have met the educational requirements for licensure for the profession for which he or she has applied.

(5) Individuals who have commenced the experience requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c) but failed to register as required by subsection (1) shall register with the department before January 1, 2000. Individuals who fail to comply with this subsection shall not be granted a license, and any time spent by the individual completing the experience requirement prior to registering as an intern shall not count toward completion of such requirement.

491.0057 Dual licensure as a marriage and family therapist. —The department shall license as a marriage and family therapist any person who demonstrates to the board that he or she:
   (1) Holds a valid, active license as a psychologist under chapter 490 or as a clinical social worker or mental health counselor under this chapter, or is certified under s. 464.012 as an advanced registered nurse practitioner who has been determined by the Board of Nursing as a specialist in psychiatric mental health.
   (2) Has held a valid, active license for at least 3 years.
   (3) Has passed the examination provided by the department for marriage and family therapy.

491.006 Licensure or certification by endorsement. —
(1) The department shall license or grant a certificate to a person in a profession regulated by this chapter who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she:
   (a) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.
   (b) 1. Holds an active valid license to practice and has actively practiced the profession for which licensure is applied in another state for 3 of the last 5 years immediately preceding licensure.
      2. Meets the education requirements of this chapter for the profession for which licensure is applied.
      3. Has passed a substantially equivalent licensing examination in another state or has passed the licensure examination in another state for which the applicant seeks licensure.
      4. Holds a license in good standing, is not under investigation for an act that would constitute a violation of this chapter, and has not been found to have committed any act that would constitute a violation of this chapter. The fees paid by any applicant for certification as a master social worker under this section are nonrefundable.

(2) The department shall not issue a license or certificate by endorsement to any applicant who is under investigation in this or another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 491.009 shall apply.

491.0065 Requirement for instruction on HIV and AIDS. —The board shall require, as a condition of granting a license under this chapter, that an applicant making initial application for licensure complete an education course acceptable to the board on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon submission of an affidavit showing good cause, be allowed 6 months to complete this requirement.

491.007 Renewal of license, registration, or certificate. —
(1) The board or department shall prescribe by rule a method for the biennial renewal of licenses or certificates at a fee set by rule, not to exceed $250.
(2) Each applicant for renewal shall present satisfactory evidence that, in the period since the license or certificate was issued, the applicant has completed continuing education requirements set by rule of the board or department. Not more than 25 classroom hours of continuing education per year shall be required. A certified master social worker is exempt from the continuing education requirements for the first renewal of the certificate.

(3) The board or department shall prescribe by rule a method for the biennial renewal of an intern registration at a fee set by rule, not to exceed $100.

491.008 Inactive status; reactivation of licenses; fees.—

(1) Inactive status is the licensure status that results when a licensee has applied to be placed on inactive status and has paid a $50 fee to the department.
   (a) An inactive license may be renewed biennially for $50 per biennium.
   (b) An inactive license may be reactivated by submitting an application to the department, completing the continuing education requirements, complying with any background investigation required, complying with other requirements prescribed by the board, and paying a $50 reactivation fee plus the current biennial renewal fee at the time of reactivation.

(2) The board may adopt rules relating to inactive licenses and the reactivation of licenses.

491.0085 Continuing education and laws and rules courses; approval of providers, programs, and courses; proof of completion.—

(1) Continuing education providers, programs, and courses and laws and rules courses and their providers and programs shall be approved by the department or the board.

(2) The department or the board has the authority to set a fee not to exceed $200 for each applicant who applies for or renews provider status. Such fees shall be deposited into the Medical Quality Assurance Trust Fund.

(3) Proof of completion of the required number of hours of continuing education and completion of the laws and rules course shall be submitted to the department or the board in the manner and time specified by rule and on forms provided by the department or the board.

(4) The department or the board shall adopt rules and guidelines to administer and enforce the provisions of this section.

491.0111 Sexual misconduct.—Sexual misconduct by any person licensed or certified under this chapter, in the practice of her or his profession, is prohibited. Sexual misconduct shall be defined by rule.

491.0112 Sexual misconduct by a psychotherapist; penalties.—

(1) Any psychotherapist who commits sexual misconduct with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083; however, a second or subsequent offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any psychotherapist who violates subsection (1) by means of therapeutic deception commits a felony of the second degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The giving of consent by the client to any such act shall not be a defense to these offenses.

(4) For the purposes of this section:
   (a) The term “psychotherapist” means any person licensed pursuant to chapter 458, chapter 459, part I of chapter 464, chapter 490, or chapter 491, or any other person who provides or purports to provide treatment, diagnosis, assessment, evaluation, or counseling of mental or emotional illness, symptom, or condition.
   (b) “Therapeutic deception” means a representation to the client that sexual contact by the psychotherapist is consistent with or part of the treatment of the client.
   (c) “Sexual misconduct” means the oral, anal, or vaginal penetration of another by, or contact with, the sexual organ of another or the anal or vaginal penetration of another by any object.
   (d) “Client” means a person to whom the services of a psychotherapist are provided.

491.012 Violations; penalty; injunction.—

(1) It is unlawful and a violation of this chapter for any person to:
   (a) Use the following titles or any combination thereof, unless the person holds a valid, active license as a clinical social worker issued pursuant to this chapter:
      1. “Licensed clinical social worker.”
      2. “Clinical social worker.”
      3. “Licensed social worker.”
      4. “Psychiatric social worker.”
      5. “Psychosocial worker.”
   (b) Use the following titles or any combination thereof, unless the person holds a valid, active license as a marriage and family therapist issued pursuant to this chapter:
      1. “Licensed marriage and family therapist.”
      2. “Marriage and family therapist.”
      3. “Marriage counselor.”
      4. “Marriage consultant.”
      5. “Family therapist.”
      6. “Family counselor.”
      7. “Family consultant.”
   (c) Use the following titles or any combination thereof, unless the person holds a valid, active license as a mental health counselor issued pursuant to this chapter:
      1. “Licensed mental health counselor.”
      2. “Mental health counselor.”
      3. “Mental health therapist.”
      4. “Mental health consultant.”
   (d) Use the terms psychotherapist, sex therapist, or juvenile sexual offender therapist unless such person is licensed pursuant to this chapter or chapter 490, or is certified under s. 464.012 as an advanced registered nurse practitioner who has been determined by the Board of Nursing as a specialist in psychiatric mental health and the use of such terms is within the scope of her or his practice based on education, training, and licensure.
   (e) Present as her or his own the clinical social work, marriage and family therapy, or mental health counseling license of another.
   (f) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a license.
   (g) Use or attempt to use a license issued pursuant to this chapter which has been revoked or is under suspension.
   (h) Knowingly conceal information relative to violations of this chapter.
   (i) Practice clinical social work in this state for compensation, unless the person holds a valid, active license to practice clinical social work issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.
   (j) Practice marriage and family therapy in this state for compensation, unless the person holds a valid, active license to practice marriage and family therapy issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.
   (k) Practice mental health counseling in this state for compensation, unless the person holds a valid, active license to practice mental health counseling issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.
No provision of this chapter shall be construed to limit the practice of physicians licensed pursuant to chapter 458 or chapter 459, or psychologists licensed pursuant to chapter 490, so long as they do not unlawfully hold themselves out to the public as possessing a license, provisional license, registration, or certificate issued pursuant to this chapter or use a professional title protected by this chapter.

No provision of this chapter shall be construed to limit the practice of nursing, school psychology, or psychology, or to prevent qualified members of other professions from doing work of a nature consistent with their training and licensure, so long as they do not hold themselves out to the public as possessing a license, provisional license, registration, or certificate issued pursuant to this chapter or use a title protected by this chapter.

No provision of this chapter shall be construed to limit the performance of activities of a rabbi, priest, minister, or member of the clergy of any religious denomination or sect, or use of the terms “Christian counselor” or “Christian clinical counselor” when the activities are within the scope of the performance of his or her regular or specialized ministerial duties and no compensation is received by him or her, or when such activities are performed, with or without compensation, by a person for or under the auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination, or sect, and when the person rendering service remains accountable to the established authority thereof.

No person shall be required to be licensed, provisionally licensed, registered, or certified under this chapter who:

(a) Is a salaried employee of a government agency; a developmental disability facility or program; a mental health, alcohol, or drug abuse facility operating under chapter 393, chapter 394, or chapter 397; the statewide child care resource and referral network operating under s. 1002.92; a child-placing or child-caring agency licensed pursuant to chapter 409; a domestic violence center certified pursuant to chapter 39; an accredited academic institution; or a research institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a clinical social worker, mental health counselor, or marriage and family therapist.

(b) Is a salaried employee of a private, nonprofit organization providing counseling services to children, youth, and families, if such services are provided for no charge, if such employee is performing duties for which he or she was trained and hired, so long as the employee is not held out to the public as a clinical social worker, mental health counselor, or marriage and family therapist.

(c) Is a student providing services regulated under this chapter who is pursuing a course of study which leads to a degree in a profession regulated by this chapter, is providing services in a training setting, provided such services and associated activities constitute part of a supervised course of study, and is designated by the title “student intern.”

(d) Is not a resident of this state but offers services in this state, provided:

1. Such services are performed for no more than 15 days in any calendar year; and
2. Such nonresident is licensed or certified to practice the services provided by a state or territory of the United States or by a foreign country or province.

No provision of this chapter shall be construed to limit the practice of any individual who solely engages in behavior analysis so long as he or she does not hold himself or herself out to the public as possessing a license issued pursuant to this chapter or use a title protected by this chapter.

Nothing in subsections (2)-(4) shall exempt any person from the provisions of s. 491.012(1)(a)-(c), (l), and (m).

Except as stipulated by the board, the exemptions contained in this section do not apply to any person licensed under this chapter whose license has been suspended or revoked by the board or another jurisdiction.

Nothing in this section shall be construed to exempt a person from meeting the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the person is not qualified by training or experience.

A person licensed under this chapter who is qualified as determined by the board may practice hypnosis as defined in s. 485.003(1). The provisions of this chapter may not be interpreted to limit or affect the right of any person qualified pursuant to chapter 485 to practice hypnosis pursuant to that chapter or to practice hypnosis for nontherapeutic purposes, so long as such person does not hold herself or himself out to the public as possessing a license issued pursuant to this chapter or use a title protected by this chapter.
491.0143 Practice of sex therapy. — Only a person licensed by
this chapter who meets the qualifications set by the board may hold
herself or himself out as a sex therapist. The board shall define these
qualifications by rule. In establishing these qualifications, the board
may refer to the sexual disorder and sexual dysfunction sections of the
most current edition of the Diagnostic and Statistical Manual of the
American Psychiatric Association or other relevant publications.

491.0144 The practice of juvenile sexual offender therapy. — Only
a person licensed by this chapter who meets the qualifications set by
the board may hold himself or herself out as a juvenile sexual offender
therapist, except as provided in s. 490.0145. The board shall determine
these qualifications. The board shall require training and coursework in
the specific areas of juvenile sexual offender behaviors, treatments, and
related issues. In establishing these qualifications, the board may refer
to the sexual disorder and dysfunction sections of the most current
edition of the Diagnostic and Statistical Manual of the American
Psychiatric Association or other relevant publications.

456.063 Sexual misconduct; disqualification for license, certificate,
or registration.
(1) Sexual misconduct in the practice of a health care profession
means violation of the professional relationship through which
the health care practitioner uses such relationship to engage or
attempt to engage the patient or client, or an immediate family
member, guardian, or representative of the patient or client in, or
to induce or attempt to induce such person to engage in, verbal
or physical sexual activity outside the scope of the professional
practice of such health care profession. Sexual misconduct in the
practice of a health care profession is prohibited.
(2) Each board within the jurisdiction of the department, or the
department if there is no board, shall refuse to admit a candidate
to any examination and refuse to issue a license, certificate, or
registration to any applicant if the candidate or applicant has:
(a) Had any license, certificate, or registration to practice any
profession or occupation revoked or surrendered based
on a violation of sexual misconduct in the practice of that
profession under the laws of any other state or any territory
or possession of the United States and has not had that
license, certificate, or registration reinstated by the licensing
authority of the jurisdiction that revoked the license,
certificate, or registration; or
(b) Committed any act in any other state or any territory or
possession of the United States, which if committed in this
state would constitute sexual misconduct.

For purposes of this subsection, a licensing authority’s
acceptance of a candidate’s relinquishment of a license
which is offered in response to or in anticipation of the filing
of administrative charges against the candidate’s license
constitutes the surrender of the license.
(3) Licensed health care practitioners shall report allegations of
sexual misconduct to the department, regardless of the practice
setting in which the alleged sexual misconduct occurred.

A case study

There are additional rules in the Florida Statutes that explain in detail
the more obvious violations of sexual misconduct that no one could
ever misconstrue as ethical. This case study is included because it
is a Florida court decisions concerning the boundary issue of sexual
misconduct brought against a licensed clinical social worker. This
case applies the elements of the Florida Statutes that extend to mental
health counselors and marriage and family therapists as well. The
violations are clear and obviously unethical when reviewing the facts
of the case. Here is the summary from the 2004 court action:

The client, a female and second grade teacher in Bradenton, began
working with the LCSW on an issue with her teenage son’s aggressive
behavior after the parent’s divorce. The respondent (LCSW) saw the
son for a few sessions and them began to focus on the mother.

At first the therapist sat in a chair at a normal distance, but after a
few sessions, suggested they sit closer on the same couch. He asked
her some questions about her father, which caused her to become
emotional and cry, and he put his arm around her to console her.

As the sessions continued over several months, he suggested that
she lay down on the couch with her head on a pillow on his lap. He
referred to this as play therapy, which involved stroking her hair,
and eventually led to kissing her forehead. From there they began
and ended each session with a hug, and at one point he tried to kiss
her on the neck but she resisted physically and verbally.

Over a period of two years and 40 sessions, some four months apart,
the client began to have feelings for the social worker. The therapist
began to ask about the client’s divorce and confided that he had
problems in his marriage and might consider a separation. The client
began having dreams about the therapist and started bringing him
gifts and food to have an “office picnic.”

After the dreams continued, the client realized the therapy was not
addressing her needs, and her insurance was about to change and would
no longer cover the sessions. Though 40 sessions had occurred and 31
invoices were billed, only 17 sessions were covered by case notes.

The client terminated the sessions, but later received services from
another therapist and the concepts of counter-transference and
attachment were discussed. The first therapist continued to call the
client at home to restart the sessions and he invited her to lunch. The
client refused, and when he called her again on New Year’s Day, she
told him to never call again and he complied.

The client brought a case against the LCSW based on Section
120.57(1), which covers court cases to protect consumers, and Statute
491 on sexual misconduct from the 2004 Florida Statutes. The Florida
Court decided in favor of the client because the respondent did not
provide the minimum requirements for performance as a LCSW,
committed numerous boundary issues related to the sexual misconduct,
violated rules for case documentation, record maintenance and billing,
and misled the method of play therapy which was not warranted at
all in this case.

He was put on probation for five years, fined $2,000 dollars, ordered
to complete 100 hours of in-service training on boundary issues,
and required to practice and submit reports carefully scrutinized by
a supervisor. The entire case can be reviewed online, and the Web
address is included in the reference section for Case no. 2000-
02291, DOH-04-1112.
491.0145 Certified master social worker. — The department may certify an applicant for a designation as a certified master social worker upon the following conditions:

1. The applicant completes an application to be provided by the department and pays a nonrefundable fee not to exceed $250 to be established by rule of the department. The department must receive the completed application at least 60 days before the date of the examination in order for the applicant to qualify to take the scheduled exam.

2. The applicant submits proof satisfactory to the department that the applicant has received a doctoral degree in social work, or a master’s degree with a major emphasis or specialty in clinical practice or administration, including, but not limited to, agency administration and supervision, program planning and evaluation, staff development, research, community organization, community services, social planning, and human service advocacy. Doctoral degrees must have been received from a graduate school of social work, which at the time the applicant was enrolled and graduated was accredited by an accrediting agency approved by the United States Department of Education. Master’s degrees must have been received from a graduate school of social work which at the time the applicant was enrolled and graduated was accredited by the Council on Social Work Education or the Canadian Association of Schools of Social Work or by one that meets comparable standards.

3. The applicant has had at least 3 years’ experience, as defined by rule, including, but not limited to, clinical services or administrative activities as defined in subsection (2), 2 years of which must be at the post-master’s level under the supervision of a person who meets the education and experience requirements for certification as a certified master social worker, as defined by rule, or licensure as a clinical social worker under this chapter. A doctoral internship may be applied toward the supervision requirement.

4. Any person who holds a master’s degree in social work from institutions outside the United States may apply to the department for certification if the academic training in social work has been evaluated as equivalent to a degree from a school accredited by the Council on Social Work Education. Any such person shall submit a copy of the academic training from the Foreign Equivalency Determination Service of the Council on Social Work Education.

5. The applicant has passed an examination required by the department for this purpose. The nonrefundable fee for such examination may not exceed $250 as set by department rule.

6. Nothing in this chapter shall be construed to authorize a certified master social worker to provide clinical social work services.

491.0147 Confidentiality and privileged communications. — Any communication between any person licensed or certified under this chapter and her or his patient or client shall be confidential. This secrecy may be waived under the following conditions:

1. When the person licensed or certified under this chapter is a party defendant to a civil, criminal, or disciplinary action arising from a complaint filed by the patient or client, in which case the waiver shall be limited to that action.

2. When the patient or client agrees to the waiver, in writing, or, when more than one person in a family is receiving therapy, when each family member agrees to the waiver, in writing.

3. When, in the clinical judgment of the person licensed or certified under this chapter, there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society and the person licensed or certified under this chapter communicates the information only to the potential victim, appropriate family member, or law enforcement or other appropriate authorities. There shall be no liability on the part of, and no cause of action of any nature shall arise against, a person licensed or certified under this chapter for the disclosure of otherwise confidential communications under this subsection.

491.0148 Records. — Each psychotherapist who provides services as defined in this chapter shall maintain records. The board may adopt rules defining the minimum requirements for records and reports, including content, length of time records shall be maintained, and transfer of either the records or a report of such records to a subsequent treating practitioner or other individual with written consent of the client or clients.

491.0149 Display of license; use of professional title on promotional materials. —

(a) A person licensed under this chapter as a clinical social worker, marriage and family therapist, or mental health counselor, or certified as a master social worker shall conspicuously display the valid license issued by the department or a true copy thereof at each location at which the licensee practices his or her profession.

(b) A licensed clinical social worker shall include the words “licensed clinical social worker” or the letters “LCSW” on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee.

2. A licensed marriage and family therapist shall include the words “licensed marriage and family therapist” or the letters “LMFT” on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee.

3. A licensed mental health counselor shall include the words “licensed mental health counselor” or the letters “LMHC” on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee.

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491.015 Duties of the department as to certified master social workers. —
(1) All functions reserved to boards under chapter 456 shall be exercised by the department with respect to the regulation of certified master social workers and in a manner consistent with the exercise of its regulatory functions.
(2) The department shall adopt rules to implement and enforce provisions relating to certified master social workers.

491.016 Social work; use of title. —
(1) A social worker is not authorized to conduct clinical social work without obtaining and possessing a license or certification issued pursuant to this chapter.
(2) It shall be a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for a person, for or without compensation, to hold himself or herself out to the public as a social worker either directly or through a governmental or private organization, entity, or agency unless that person:

Collaboration and service delivery for exceptional student education

Language addressing the collaboration of every individual who has a vested interest in the best interest of the child—including licensed professionals and the students’ family—has been added to Chapter 2013-236. The following items are portions of this legislation, which are applicable to school social workers.

CHAPTER 2013-236
Committee Substitute for Senate Bill No. 1108
An act relating to exceptional student education; amending s. 1002.20, F.S.; prohibiting certain actions with respect to parent meetings with school district personnel; providing requirements for meetings relating to exceptional student education and related services.

Section 5.
Section 1003.572, Florida Statutes, is created to read:

1003.572 Collaboration of public and private instructional personnel. —
(1) As used in this section, the term "private instructional personnel" means:

(a) Individuals certified under s. 393.17 or licensed under chapter 490 or chapter 491 for applied behavior analysis services as defined in ss. 627.6686 and 641.31098.
(b) Speech-language pathologists licensed under s. 468.1185.
(c) Occupational therapists licensed under part III of chapter 468.
(d) Physical therapists licensed under chapter 486.
(e) Psychologists licensed under chapter 490.
(f) Clinical social workers licensed under chapter 491.
(g) Mental health counselors as licensed under chapter 491.

A word of caution

Each county in Florida develops its own policies and procedures to implement the IDEA Act in its county. Some counties interpret the federal law differently than others, especially if the county adopts the structure of “school-based management.” IDEA may be interpreted differently at each school, which makes it even more confusing if the practitioner is responsible for more than one school.

All practitioners who provide service to a number of students in Exceptional Education Programs must be familiar with the IEP or 504 Plan that governs the student’s educational program in that school as compared to the Florida Statutes.

The majority of legal action in Florida schools involves a student with an IEP or 504 plan, so practitioners must be sure they receive training to be knowledgeable about the responsibilities and procedures that must be followed to provide services to these student and parents. There will be district level administrators in each county who can deliver this training in conjunction with the practitioner’s agency administrators. Furthermore, all school-related staff members and contractors working with the young client must study Florida’s IDEA Act in its entirety.
Florida Mental Health Act

This is a comprehensive law that covers all aspects of mental health services in the state of Florida and is summarized as follows:

394.453 Legislative intent. — It is the intent of the Legislature to authorize and direct the Department of Children and Family Services to evaluate, research, plan, and recommend to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders. It is the intent of the Legislature that treatment programs for such disorders shall include, but not be limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment in order to encourage them to assume responsibility for their treatment and recovery. It is intended that such persons be provided with emergency service and temporary detention for evaluation when required; that they be admitted to treatment facilities on a voluntary basis when extended or continuing care is needed and unavailable in the community; that involuntary placement be provided only when expert evaluation determines that it is necessary; that any involuntary treatment or examination be accomplished in a setting which is clinically appropriate and most likely to facilitate the person’s return to the community as soon as possible; and that individual dignity and human rights be guaranteed to all persons who are admitted to mental health facilities or who are being held under s. 394.463. It is the further intent of the Legislature that the least restrictive means of intervention be employed based on the individual needs of each person, within the scope of available services. It is the policy of this state that the use of restraint and seclusion on clients is justified only as an emergency safety measure to be used in response to imminent danger to the client or others. It is, therefore, the intent of the Legislature to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving persons with mental illness.

394.455 Definitions. — As used in this part, unless the context clearly requires otherwise, the term:

(1) “Administrator” means the chief administrative officer of a receiving or treatment facility or his or her designee.

(2) “Clinical psychologist” means a psychologist as defined in s. 490.003(7) with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under this part.

(3) “Clinical record” means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by a facility which pertains to the patient’s hospitalization or treatment.

(4) “Clinical social worker” means a person licensed to practice as defined under chapter 491.

(5) “Community facility” means any community service provider contracting with the department to furnish substance abuse or mental health services under part IV of this chapter.

(6) “Community mental health center or clinic” means a publicly funded, not-for-profit center which contracts with the department for the provision of inpatient, outpatient, day treatment, or emergency services.

(7) “Court,” unless otherwise specified, means the circuit court.

(8) “Department” means the Department of Children and Family Services.

(9) “Express and informed consent” means consent voluntarily given in writing, by a competent person, after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(10) “Facility” means any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have a mental illness or have been diagnosed as having a mental illness. “Facility” does not include any program or entity licensed pursuant to chapter 400 or chapter 429.

(11) “Guardian” means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward’s person if the ward is a minor or has been adjudicated incapacitated.

(12) “Guardian advocate” means a person appointed by a court to make decisions regarding mental health treatment on behalf of a patient who has been found incompetent to consent to treatment pursuant to this part. The guardian advocate may be granted specific additional powers by written order of the court, as provided in this part.

(13) “Hospital” means a facility as defined in s. 395.002 and licensed under chapter 395 and part II of chapter 408.

(14) “Incapacitated” means that a person has been adjudicated incapacitated pursuant to part V of chapter 744 and a guardian of the person has been appointed.

(15) “Incompetent to consent to treatment” means that a person’s judgment is so affected by his or her mental illness that the person lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical or mental health treatment.

(16) “Law enforcement officer” means a law enforcement officer as defined in s. 943.10.

(17) “Mental health overlay program” means a mobile service which provides an independent examination for voluntary admissions and a range of supplemental onsite services to persons with a mental illness in a residential setting such as a nursing home, assisted living facility, adult family-care home, or nonresidential setting such as an adult day care center. Independent examinations provided pursuant to this part through a mental health overlay program must only be provided under contract with the department for this service or be attached to a public receiving facility that is also a community mental health center.

(18) “Mental illness” means an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person’s ability to meet the ordinary demands of living. For the purposes of this part, the term does not include a developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

(19) “Mobile crisis response service” means a nonresidential crisis service attached to a public receiving facility and available 24 hours a day, 7 days a week, through which immediate intensive assessments and interventions, including screening for admission into a receiving facility, take place for the purpose of identifying appropriate treatment services.

(20) “Patient” means any person who is held or accepted for mental health treatment.

(21) “Physician” means a medical practitioner licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental and nervous disorders or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under this part.
(22) “Private facility” means any hospital or facility operated by a for-profit or not-for-profit corporation or association that provides mental health services and is not a public facility.

(23) “Psychiatric nurse” means a registered nurse licensed under part I of chapter 464 who has a master’s degree or a doctorate in psychiatric nursing and 2 years of post-master’s clinical experience under the supervision of a physician.

(24) “Psychiatrist” means a medical practitioner licensed under chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

(25) “Public facility” means any facility that has contracted with the department to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.

(26) “Receiving facility” means any public or private facility designated by the department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. The term does not include a county jail.

(27) “Representative” means a person selected to receive notice of proceedings during the time a patient is held in or admitted to a receiving or treatment facility.

(28) (a) “Restraint” means a physical device, method, or drug used to control behavior. A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual’s body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one’s body.

(b) A drug used as a restraint is a medication used to control the person’s behavior or to restrict his or her freedom of movement and is not part of the standard treatment regimen of a person with a diagnosed mental illness who is a client of the department. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; or for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.

(29) “Seclusion” means the physical segregation of a person in any fashion or involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this chapter, the term does not mean isolation due to a person’s medical condition or symptoms.

(30) “Secretary” means the Secretary of Children and Family Services.

(31) “Transfer evaluation” means the process, as approved by the appropriate district office of the department, whereby a person who is being considered for placement in a state treatment facility is first evaluated for appropriateness of admission to the facility by a community-based public receiving facility or by a community mental health center or clinic if the public receiving facility is not a community mental health center or clinic.

(32) “Treatment facility” means any state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the department when rendering such services to a person pursuant to the provisions of this part.

Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.

(33) “Service provider” means any public or private receiving facility, an entity under contract with the Department of Children and Family Services to provide mental health services, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatric nurse as defined in subsection (23), or a community mental health center or clinic as defined in this part.

(34) “Involuntary examination” means an examination performed under s. 394.463 to determine if an individual qualifies for involuntary inpatient treatment under s. 394.467(1) or involuntary outpatient treatment under s. 394.4655(1).

(35) “Involuntary placement” means either involuntary outpatient treatment pursuant to s. 394.4655 or involuntary inpatient treatment pursuant to s. 394.467.

(36) “Marriage and family therapist” means a person licensed as a marriage and family therapist under chapter 491.

(37) “Mental health counselor” means a person licensed as a mental health counselor under chapter 491.

(38) “Electronic means” means a form of telecommunication that requires all parties to maintain visual as well as audio communication.

Note: Under the Affordable Care Act, social workers, mental health counselors and marriage and family therapists are named as valuable members of the accountable care organizations, so it is important for them to be knowledgeable about the roles of other professionals on the health care team, be aware of the resources and facilities available in the community, and serve as advocates to become involved in making policy for quality health care.

394.457 Operation and administration. —

(1) Administration. — The Department of Children and Family Services is designated the “Mental Health Authority” of Florida. The department and the Agency for Health Care Administration shall exercise executive and administrative supervision over all mental health facilities, programs, and services.

(2) Responsibilities of the department. — The department is responsible for:

(a) The planning, evaluation, and implementation of a complete and comprehensive statewide program of mental health, including community services, receiving and treatment facilities, child services, research, and training as authorized and approved by the Legislature, based on the annual program budget of the department. The department is also responsible for the coordination of efforts with other departments and divisions of the state government, county and municipal governments, and private agencies concerned with and providing mental health services. It is responsible for establishing standards, providing technical assistance, and exercising supervision of mental health programs of, and the treatment of patients at, community facilities, other facilities for persons who have a mental illness, and any agency or facility providing services to patients pursuant to this part.

(b) The publication and distribution of an information handbook to facilitate understanding of this part, the policies and procedures involved in the implementation of this part, and the responsibilities of the various providers of services under this part. It shall stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the elimination and amelioration of mental illness.

(3) Power to contract. — The department may contract to provide, and be provided with, services and facilities in order to carry out its responsibilities under this part with the following agencies: public and private hospitals; receiving and treatment facilities; clinics; laboratories; departments, divisions, and other units of state
government; the state colleges and universities; the community colleges; private colleges and universities; counties, municipalities, and any other governmental unit, including facilities of the United States Government; and any other public or private entity which provides or needs facilities or services. Baker Act funds for community inpatient, crisis stabilization, short-term residential treatment, and screening services must be allocated to each county pursuant to the department’s funding allocation methodology. Notwithstanding s. 287.057(3)(e), contracts for community-based Baker Act services for inpatient, crisis stabilization, short-term residential treatment, and screening provided under this part, other than those with other units of government, to be provided for the department must be awarded using competitive sealed bids if the county commission of the county receiving the services makes a request to the department’s district office by January 15 of the contracting year. The district may not enter into a competitively bid contract under this provision if such action will result in increases of state or local expenditures for Baker Act services within the district. Contracts for these Baker Act services using competitive sealed bids are effective for 3 years. The department shall adopt rules establishing minimum standards for such contracted services and facilities and shall make periodic audits and inspections to assure that the contracted services are provided and meet the standards of the department.

(4) Application for and acceptance of gifts and grants. — The department may apply for and accept any funds, grants, gifts, or services made available to it by any agency or department of the Federal Government or any other public or private agency or individual in aid of mental health programs. All such moneys shall be deposited in the State Treasury and shall be disbursed as provided by law.

(5) Rules. —

(a) The department shall adopt rules establishing forms and procedures relating to the rights and privileges of patients seeking mental health treatment from facilities under this part.

(b) The department shall adopt rules necessary for the implementation and administration of the provisions of this part, and a program subject to the provisions of this part shall not be permitted to operate unless rules designed to ensure the protection of the health, safety, and welfare of the patients treated through such program have been adopted. Rules adopted under this subsection must include provisions governing the use of restraint and seclusion which are consistent with recognized best practices and professional judgment; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of program participants and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; and establish mandatory reporting, data collection, and data dissemination procedures and requirements. Rules adopted under this subsection must require that each instance of the use of restraint or seclusion be documented in the record of the patient.

(c) The department shall adopt rules establishing minimum standards for services provided by a mental health overlay program or a mobile crisis response service.

(6) Personnel. —

(a) The department shall, by rule, establish minimum standards of education and experience for professional and technical personnel employed in mental health programs, including members of a mobile crisis response service.

(b) The department shall design and distribute appropriate materials for the orientation and training of persons actively engaged in implementing the provisions of this part relating to the involuntary examination and placement of persons who are believed to have a mental illness.

(7) Payment for care of patients. — Fees and fee collections for patients in state-owned, state-operated, or state-supported treatment facilities shall be according to s. 402.33.

394.4572 Screening of mental health personnel. —

(1) The department and the Agency for Health Care Administration shall require level 2 background screening pursuant to chapter 435 for mental health personnel. “Mental health personnel” includes all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals held for examination or admitted for mental health treatment. For purposes of this chapter, employment screening of mental health personnel also includes, but is not limited to, employment screening as provided under chapter 435 and s. 408.809.

(a) A volunteer who assists on an intermittent basis for less than 10 hours per month is exempt from the fingerprinting and screening requirements if they are under direct supervision in the actual physical presence of a licensed health care professional.

(b) Students in the health care professions who are interning in a mental health facility licensed under chapter 395, where the primary purpose of the facility is not the treatment of minors, are exempt from the fingerprinting and screening requirements if they are under direct supervision in the actual physical presence of a licensed health care professional.

(c) Mental health personnel working in a facility licensed under chapter 395 who work on an intermittent basis for less than 15 hours per week of direct, face-to-face contact with patients, and who are not listed on the Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website, are exempt from the fingerprinting and screening requirements, except that persons working in a mental health facility where the primary purpose of the facility is the mental health treatment of minors must be fingerprinted and meet screening requirements.

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

394.4573 Continuity of care management system; measures of performance; reports.

(1) For the purposes of this section:

(a) “Case management” means those activities aimed at assessing client needs, planning services, linking the service system to a client, coordinating the various system components, monitoring service delivery, and evaluating the effect of service delivery.

(b) “Case manager” means an individual who works with clients, and their families and significant others, to provide case management.

(c) “Client manager” means an employee of the department who is assigned to specific provider agencies and geographic areas to ensure that the full range of needed services is available to clients.

(d) “Continuity of care management system” means a system that assures, within available resources, that clients have access to the full array of services within the mental health services delivery system.

(2) The department is directed to implement a continuity of care management system for the provision of mental health care, through the provision of client and case management, including clients referred from state treatment facilities to community mental...
health facilities. Such system shall include a network of client managers and case managers throughout the state designed to:

(a) Reduce the possibility of a client’s admission or readmission to a state treatment facility.

(b) Provide for the creation or designation of an agency in each county to provide single intake services for each person seeking mental health services. Such agency shall provide information and referral services necessary to ensure that clients receive the most appropriate and least restrictive form of care, based on the individual needs of the person seeking treatment. Such agency shall have a single telephone number, operating 24 hours per day, 7 days per week, where practicable, at a central location, where each client will have a central record.

(c) Advocate on behalf of the client to ensure that all appropriate services are afforded to the client in a timely and dignified manner.

(d) Require that any public receiving facility initiating a patient transfer to a licensed hospital for acute care mental health services not accessible through the public receiving facility shall notify the hospital of such transfer and send all records relating to the emergency psychiatric or medical condition.

(3) The department is directed to develop and include in contracts with service providers measures of performance with regard to goals and objectives as specified in the state plan. Such measures shall use, to the extent practical, existing data collection methods and reports and shall not require, as a result of this subsection, additional reports on the part of service providers. The department shall plan monitoring visits of community mental health facilities with other state, federal, and local governmental and private agencies charged with monitoring such facilities.

Patient rights

394.459 Rights of patients. —

(1) Right to individual dignity. — It is the policy of this state that the individual dignity of the patient shall be respected at all times and upon all occasions, including any occasion when the patient is taken into custody, held, or transported. Procedures, facilities, vehicles, and restraining devices utilized for criminals or those accused of crime shall not be used in connection with persons who have a mental illness, except for the protection of the patient or others. Persons who have a mental illness but who are not charged with a criminal offense shall not be detained or incarcerated in the jails of this state. A person who is receiving treatment for mental illness shall not be deprived of any constitutional rights. However, if such a person is adjudicated incapacitated, his or her rights may be limited to the same extent the rights of any incapacitated person are limited by law.

(2) Right to treatment. —

(a) A person shall not be denied treatment for mental illness and services shall not be delayed at a receiving or treatment facility because of inability to pay. However, every reasonable effort to collect appropriate reimbursement for the cost of providing mental health services to persons able to pay for services, including insurance or third-party payments, shall be made by facilities providing services pursuant to this part.

(b) It is further the policy of the state that the least restrictive appropriate available treatment be utilized based on the individual needs and best interests of the patient and consistent with optimum improvement of the patient’s condition.

(c) Each person who remains at a receiving or treatment facility for more than 12 hours shall be given a physical examination by a health practitioner authorized by law to give such examinations, within 24 hours after arrival at such facility.

(d) Every patient in a facility shall be afforded the opportunity to participate in activities designed to enhance self-image and the beneficial effects of other treatments, as determined by the facility.

(e) Not more than 5 days after admission to a facility, each patient shall have and receive an individualized treatment plan in writing which the patient has had an opportunity to assist in preparing and to review prior to its implementation. The plan shall include a space for the patient’s comments.

(3) Right to Express and Informed Patient Consent. —

(a) Each patient entering treatment shall be asked to give express and informed consent for admission or treatment. If the patient has been adjudicated incapacitated or found to be incompetent to consent to treatment, express and informed consent to treatment shall be sought instead from the patient’s guardian or guardian advocate. If the patient is a minor, express and informed consent for admission or treatment shall also be requested from the patient’s guardian. Express and informed consent for admission or treatment of a patient less than 18 years of age shall be required from the patient’s guardian, unless the minor is seeking outpatient crisis intervention services under s. 394.4784. Express and informed consent for admission or treatment given by a patient who is under 18 years of age shall not be a condition of admission when the patient’s guardian gives express and informed consent for the patient’s admission pursuant to s. 394.463 or s. 394.467.

2. Before giving express and informed consent, the following information shall be provided and explained in plain language to the patient, or to the patient’s guardian if the patient is 18 years of age or older and has been adjudicated incapacitated, or to the patient’s guardian advocate if the patient has been found to be incompetent to consent to treatment, or to both the patient and the guardian if the patient is a minor: the reason for admission or treatment; the proposed treatment; the purpose of the treatment to be provided; the common risks, benefits, and side effects thereof; the specific dosage range for the medication, when applicable; alternative treatment modalities; the approximate length of care; the potential effects of stopping treatment; how treatment will be monitored; and that any consent given for treatment may be revoked orally or in writing before or during the treatment period by the patient or by a person who is legally authorized to make health care decisions on behalf of the patient.

(b) In the case of medical procedures requiring the use of a general anesthetic or electroconvulsive treatment, and prior to performing the procedure, express and informed consent shall be obtained from the patient if the patient is legally competent, from the guardian of a minor patient, from the guardian of a patient who has been adjudicated incapacitated, or from the guardian advocate of the patient if the guardian advocate has been given express court authority to consent to medical procedures or electroconvulsive treatment as provided under s. 394.4598.

(c) When the department is the legal guardian of a patient, or is the custodian of a patient whose physician is unwilling to perform a medical procedure, including an electroconvulsive treatment, based solely on the patient’s consent and whose guardian or guardian advocate is unknown or un-locatable,
(b) Each patient admitted to a facility under the provisions of this part shall be allowed to receive, send, and mail sealed, unopened correspondence; and no patient’s incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the patient or others, in which case the administrator may direct reasonable examination of such mail and may regulate the disposition of such items or substances.

(c) Each facility must permit immediate access to any patient, subject to the patient’s right to deny or withdraw consent at any time, by the patient’s family members, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney, unless such access would be detrimental to the patient. If a patient’s right to communicate or to receive visitors is restricted by the facility, written notice of such restriction and the reasons for the restriction shall be served on the patient, the patient’s attorney, and the patient’s guardian, guardian advocate, or representative; and such restriction shall be recorded on the patient’s clinical record with the reasons therefore. The restriction of a patient’s right to communicate or to receive visitors shall be reviewed at least every 7 days. The right to communicate or receive visitors shall not be restricted as a means of punishment. Nothing in this paragraph shall be construed to limit the provisions of paragraph (d).

(d) Each facility shall establish reasonable rules governing visitors, visiting hours, and the use of telephones by patients in the least restrictive possible manner. Patients shall have the right to contact and receive communication from their attorneys at any reasonable time.

(e) Each patient receiving mental health treatment in any facility shall have ready access to a telephone in order to report an alleged abuse. The facility staff shall orally and in writing inform each patient of the procedure for reporting abuse and shall maintain every reasonable effort to present the information in a language the patient understands. A written copy of that procedure, including the telephone number of the central abuse hotline and reporting forms, shall be posted in plain view.

(f) The department shall adopt rules providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the requirements and procedures for the reporting of abuse.

6 Care and custody of personal effects of patients. — A patient’s right to the possession of his or her clothing and personal effects shall be respected. The facility may take temporary custody of such effects when required for medical and safety reasons. A patient’s clothing and personal effects shall be inventoried upon their removal into temporary custody. Copies of this inventory shall be given to the patient and to the patient’s guardian, guardian advocate, or representative and shall be recorded in the patient’s clinical record. This inventory may be amended upon the request of the patient or the patient’s guardian, guardian advocate, or representative. The inventory and any amendments to it must be witnessed by two members of the facility staff and by the patient, if able. All of a patient’s clothing and personal effects held by the facility shall be returned to the patient immediately upon the discharge or transfer of the patient from the facility, unless such return would be detrimental to the patient. If personal effects are not returned to the patient, the reason must be documented in the clinical record along with the disposition of the clothing and personal effects, which may be given instead to the patient’s guardian, guardian advocate, or representative. As soon as practicable after an emergency transfer of a patient, the patient’s clothing and personal effects shall be transferred to the patient’s new location, together with a copy of the inventory and any amendments, unless an alternate plan is approved by the patient, if able, and by the patient’s guardian, guardian advocate, or representative.
Voting in public elections. — A patient who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department shall establish rules to enable patients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

Habeas Corpus. —

(a) At any time, and without notice, a person held in a receiving or treatment facility, or a relative, friend, guardian, guardian advocate, representative, or attorney, or the department, on behalf of such person, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the court order a return to the writ in accordance with chapter 79. Each patient held in a facility shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) At any time, and without notice, a person who is a patient in a receiving or treatment facility, or a relative, friend, guardian, guardian advocate, representative, or attorney, or the department, on behalf of such person, may file a petition in the circuit court in the county where the patient is being held alleging that the patient is being unjustly denied a right or privilege granted herein or that a procedure authorized herein is being abused. Upon the filing of such a petition, the court shall have the authority to conduct a judicial inquiry and to issue any order needed to correct an abuse of the provisions of this part.

(c) The administrator of any receiving or treatment facility receiving a petition under this subsection shall file the petition with the clerk of the court on the next court working day.

(d) No fee shall be charged for the filing of a petition under this subsection.

Violations. — The department shall report to the Agency for Health Care Administration any violation of the rights or privileges of patients, or of any procedures provided under this part, by any facility or professional licensed or regulated by the agency. The agency is authorized to impose any sanction authorized for violation of this part, based solely on the investigation and findings of the department.

Liability for violations. — Any person who violates or abuses any rights or privileges of patients provided by this part is liable for damages as determined by law. Any person who acts in good faith in compliance with the provisions of this part is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility. However, this section does not relieve any person from liability if such person commits negligence.

Right to participate in treatment and discharge planning. — The patient shall have the opportunity to participate in treatment and discharge planning and shall be notified in writing of his or her right, upon discharge from the facility, to seek treatment from the professional or agency of the patient's choice.

Posting of notice of rights of patients. — Each facility shall post a notice listing and describing, in the language and terminology that the persons to whom the notice is addressed can understand, the rights provided in this section. This notice shall include a statement that provisions of the federal Americans with Disabilities Act apply and the name and telephone number of a person to contact for further information. This notice shall be posted in a place readily accessible to patients and in a format easily seen by patients. This notice shall include the telephone numbers of the Florida local advocacy council and Advocacy Center for Persons with Disabilities, Inc.

Florida statewide and local advocacy councils; access to patients and records. — Any facility designated by the department as a receiving or treatment facility must allow access to any patient and the clinical and legal records of any patient admitted pursuant to the provisions of this act by members of the Florida statewide and local advocacy councils.

Persons to be notified; patient's representative. —

(1) Voluntary patients. — At the time a patient is voluntarily admitted to a receiving or treatment facility, the identity and contact information of a person to be notified in case of an emergency shall be entered in the patient's clinical record.

(2) Involuntary patients. —

(a) At the time a patient is admitted to a facility for involuntary examination or placement, or when a petition for involuntary placement is filed, the names, addresses, and telephone numbers of the patient's guardian or guardian advocate, or representative if the patient has no guardian, and the patient's attorney shall be entered in the patient's clinical record.

(b) If the patient has no guardian, the patient shall be asked to designate a representative. If the patient is unable or unwilling to designate a representative, the facility shall select a representative.

(c) The patient shall be consulted with regard to the selection of a representative by the receiving or treatment facility and shall have authority to request that any such representative be replaced.

(d) When the receiving or treatment facility selects a representative, first preference shall be given to a health care surrogate, if the patient has previously selected one. If the patient has not previously selected a health care surrogate, the selection, except for good cause documented in the patient's clinical record, shall be made from the following list in the order of listing:

1. The patient's spouse.
3. A parent of the patient.
4. The adult next of kin of the patient.
5. An adult friend of the patient.
6. The appropriate Florida local advocacy council as provided in s. 402.166.

(e) A licensed professional providing services to the patient under this part, an employee of a facility providing direct services to the patient under this part, a department employee, a person providing other substantial services to the patient in a professional or business capacity, or a creditor of the patient shall not be appointed as the patient's representative.

Guardian advocate. —

(1) The administrator may petition the court for the appointment of a guardian advocate based upon the opinion of a psychiatrist that the patient is incompetent to consent to treatment. If the court finds that a patient is incompetent to consent to treatment and has not been adjudicated incapacitated and a guardian with the authority to consent to mental health treatment appointed, it shall appoint a guardian advocate. The patient has the right to have an attorney represent him or her at the hearing. If the person is indigent, the court shall appoint the office of the public defender to represent him or her at the hearing. If the person is not indigent, the court shall appoint the department to represent him or her at the hearing. The patient has the right to testify, cross-examine witnesses, and present witnesses. The proceeding shall be recorded either electronically or stenographically, and testimony shall be provided under oath. One of the professionals authorized to give an opinion in support of a petition for involuntary placement, as described in s. 394.4655 or s. 394.467, must testify. A guardian advocate must meet the qualifications of a guardian contained in part IV of chapter 744, except that a professional referred to in this part, an employee of the facility providing direct services to the patient under this part, a departmental employee, a facility administrator, or member of the Florida local advocacy council shall not be appointed. A person who is appointed as a guardian advocate must agree to the appointment.

(2) A facility requesting appointment of a guardian advocate must, prior to the appointment, provide the prospective guardian advocate with information about the duties and responsibilities of guardian advocates, including the information about the ethics of
medical decision making. Before asking a guardian advocate to give consent to treatment for a patient, the facility shall provide to the guardian advocate sufficient information so that the guardian advocate can decide whether to give express and informed consent to the treatment, including information that the treatment is essential to the care of the patient, and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. Before giving consent to treatment, the guardian advocate must meet and talk with the patient and the patient’s physician in person, if at all possible, and by telephone, if not. The decision of the guardian advocate may be reviewed by the court, upon petition of the patient’s attorney, the patient’s family, or the facility administrator.

(3) Prior to a guardian advocate exercising his or her authority, the guardian advocate shall attend a training course approved by the court. This training course, of not less than 4 hours, must include, at minimum, information about the patient rights, psychotropic medications, diagnosis of mental illness, the ethics of medical decision making, and duties of guardian advocates. This training course shall take the place of the training required for guardians appointed pursuant to chapter 744.

(4) The information to be supplied to prospective guardian advocates prior to their appointment and the training course for guardian advocates must be developed and completed through a course developed by the department and approved by the chief judge of the circuit court and taught by a court-approved organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar. The court may, in its discretion, waive some or all of the training requirements for guardian advocates or impose additional requirements. The court shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian advocate, the duties assigned to the guardian advocate, and the needs of the patient.

(5) In selecting a guardian advocate, the court shall give preference to a health care surrogate, if the patient has already designated one. If the patient has not previously selected a health care surrogate, except for good cause documented in the court record, the selection shall be made from the following list in the order of listing:
   (a) The patient’s spouse.
   (b) An adult child of the patient.
   (c) A parent of the patient.
   (d) The adult next of kin of the patient.
   (e) An adult friend of the patient.
   (f) An adult trained and willing to serve as guardian advocate for the patient.

(6) If a guardian with the authority to consent to medical treatment has not already been appointed or if the patient has not already designated a health care surrogate, the court may authorize the guardian advocate to consent to medical treatment, as well as mental health treatment. Unless otherwise limited by the court, a guardian advocate with authority to consent to medical treatment shall have the same authority to make health care decisions and be subject to the same restrictions as a proxy appointed under part IV of chapter 765. Unless the guardian advocate has sought and received express court approval in proceeding separate from the proceeding to determine the competence of the patient to consent to medical treatment, the guardian advocate may not consent to:
   (a) Abortion.
   (b) Sterilization.
   (c) Electroconvulsive treatment.
   (d) Psychosurgery.
   (e) Experimental treatments that have not been approved by a federally approved institutional review board in accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56. The court must base its decision on evidence that the treatment or procedure is essential to the care of the patient and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. The court shall follow the procedures set forth in subsection (1) of this section.

(7) The guardian advocate shall be discharged when the patient is discharged from an order for involuntary outpatient placement or involuntary inpatient placement or when the patient is transferred from involuntary to voluntary status. The court or a hearing officer shall consider the competence of the patient pursuant to subsection (1) and may consider an involuntary placed patient’s competence to consent to treatment at any hearing. Upon sufficient evidence, the court may restore, or the hearing officer may recommend that the court restore, the patient’s competence. A copy of the order restoring competence or the certificate of discharge containing the restoration of competence shall be provided to the patient and the guardian advocate.

Professional rights

394.460 Rights of professionals. — No professional referred to in this part shall be required to accept patients for treatment of mental, emotional, or behavioral disorders. Such participation shall be voluntary.

394.4615 Clinical records; confidentiality. —
(1) A clinical record shall be maintained for each patient. The record shall include data pertaining to admission and such other information as may be required under rules of the department. A clinical record is confidential and exempt from the provisions of s. 119.07(1). Unless waived by express and informed consent, by the patient or the patient’s guardian or guardian advocate or, if the patient is deceased, by the patient’s personal representative or the family member who stands next in line of intestate succession, the confidential status of the clinical record shall not be lost by either authorized or unauthorized disclosure to any person, organization, or agency.

(2) The clinical record shall be released when:
   (a) The patient or the patient’s guardian authorizes the release. The guardian or guardian advocate shall be provided access to the appropriate clinical records of the patient. The patient or the patient’s guardian or guardian advocate may authorize the release of information and clinical records to appropriate persons to ensure the continuity of the patient’s health care or mental health care.
   (b) The patient is represented by counsel and the records are needed by the patient’s counsel for adequate representation.
   (c) The court orders such release. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.
   (d) The patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Families, and the Department of Corrections requests such records. These records shall be furnished without charge to the Department of Corrections.

(3) Information from the clinical record may be released in the following circumstances:
   (a) When a patient has declared an intention to harm other persons. When such declaration has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.
(b) When the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. 394.4655, the clinical record may be released to the state attorney, the public defender or the patient’s private legal counsel, the court, and to the appropriate mental health professionals, including the service provider identified in s. 394.4655(6)
(b2), in accordance with state and federal law.

(4) Information from clinical records may be used for statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

(5) Information from clinical records may be used by the Agency for Health Care Administration, the department, and the Florida advocacy councils for the purpose of monitoring facility activity and complaints concerning facilities.

(6) Clinical records relating to a Medicaid recipient shall be furnished to the Medicaid Fraud Control Unit in the Department of Legal Affairs, upon request.

(7) Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from the provisions of s. 119.07(1).

(8) Any facility or private mental health practitioner who acts in good faith in releasing information pursuant to this section is not subject to civil or criminal liability for such release.

(9) Nothing in this section is intended to prohibit the parent or next of kin of a person who is held in or treated under a mental health facility or program from requesting and receiving information limited to a summary of that person’s treatment plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved.

(10) Patients shall have reasonable access to their clinical records, unless such access is determined by the patient’s physician to be harmful to the patient. If the patient’s right to inspect his or her clinical record is restricted by the facility, written notice of such restriction shall be given to the patient and the patient’s guardian, guardian advocate, attorney, and representative. In addition, the restriction shall be recorded in the clinical record, together with the reasons for it. The restriction of a patient’s right to inspect his or her clinical record shall expire after 7 days but may be renewed, after review, for subsequent 7-day periods.

(11) Any person who fraudulently alters, defaces, or falsifies the clinical record of any person receiving mental health services in a facility subject to this part, or causes or procures any of these offenses to be committed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

394.4787 Definitions; ss. 394.4786, 394.4787, 394.4788, and 394.4789.—As used in this section and ss. 394.4786, 394.4788, and 394.4789:

(1) “Acute mental health services” means mental health services provided through inpatient hospitalization.

(2) “Agency” means the Agency for Health Care Administration.

(3) “Charity care” means that portion of hospital charges for care provided to a patient whose family income for the 12 months preceding the determination is equal to or below 150 percent of the current federal nonfarm poverty guideline or the amount of hospital charges due from the patient which exceeds 25 percent of the annual family income and for which there is no compensation. Charity care shall not include administrative or courtesy discounts, contractual allowances to third party payors, or failure of a hospital to collect full charges due to partial payment by governmental programs.

(4) “Indigent” means an individual whose financial status would qualify him or her for charity care.

(5) “Operating expense” means all common and accepted costs appropriate in developing and maintaining the operating of the patient care facility and its activities.

(6) “PMATF” means the Public Medical Assistance Trust Fund.

(7) “Specialty psychiatric hospital” means a hospital licensed by the agency pursuant to s. 395.002(28) and part II of chapter 408 as a specialty psychiatric hospital.

Youth and young adult rights

65C-31.002 Case Management for Young Adults Formerly in Foster Care.

(1) The services that shall be provided to young adults formerly in foster care to transition successfully to independent living shall include, as appropriate for the individual young adult:

   (a) Aftercare support services,

   (b) Road to Independence Scholarship Program, and

   (c) Transitional support services, as specified in Section 409.1451(5)(e)1., F.S.

(2) Case Management/Contact with Young Adults Formerly in Foster Care/Support by Services Worker.

   (a) Depending upon the stated wishes and needs of the young adult formerly in foster care, services worker support through home visits, office visits, and other types of contact shall occur.

   (b) A plan for transition is required for all recipients of scholarship and/or transitional support funds.

   (c) The services worker shall arrange and provide services to support young adults formerly in foster care between the ages of 18 and up to his or her 23rd birthday.

   (d) The services worker shall provide young adults formerly in foster care with developmental disabilities, mental health needs, and/or other special needs more contact, as necessary, to assist in the ability of the young adult to transition successfully to independent living.

   (e) The frequency of contact by the services worker with the young adult shall be determined by the young adult in consultation with the services worker.

   (3) Preparation and Education of the Child/Youth Age 16-17 in Foster Care. The services worker shall arrange or provide the services necessary to ensure that preparation/education for the young adult formerly in foster care to achieve independence occurs.

   (4) Initial Application, Renewal and Reinstatement for the Road to Independence Scholarship. The Road to Independence Act provides specific direction for young adults formerly in foster care to renew or continue receiving benefits and to reestablish benefits for young adults whose scholarship benefits were interrupted and who wishes to begin receiving benefits again.

   (5) Selecting the Appropriate Funding Source for Young Adult Services (Chafee or ETV).

      (a) Two major types of federal funding sources are available to support the program for young adults formerly in foster care: Chafee funds and Education and Training Voucher (ETV) funds. The services worker shall determine the appropriate fund in order to comply with federal regulations and to maximize available funding.

      (b) ETV funds have more restrictions than Chafee funds and shall be used for eligible students as the first option.
1. ETV may be used only for eligible students attending a postsecondary (college, university or vocational) school either part-time or full-time.

2. Chafee funds may be used for any of the young adult services identified in Florida Statutes, though not for young adults age 21 or 22.

3. State funds must be used for young adults age 21 and 22 if they are not eligible for ETV funds.

(6) Young Adults Formerly in Foster Care with Children of Their Own.
(a) The services worker shall determine which funds may be used for children whose parents are young adults formerly in foster care.
(b) If the parent of a child in a dependency case is a young adult formerly in foster care, the processes required in Chapter 39, F.S., for any parent still apply. Case planning, case management and required contacts shall continue as with any other dependency case.

(7) Selection of Placements for Young Adults Formerly in Foster Care. Prior to his or her 18th birthday, each young adult formerly in foster care shall choose the placement that best suits his or her needs. The services worker assigned to work with a young adult shall provide information to the young adult so as to assist in the best decision making.
(a) If the young adult elects to reside in the same or different licensed placement after reaching age 18, the services worker assigned to work with the young adult shall assist both the placement provider and the young adult understand the roles and the responsibilities of continuing this placement after the young adult’s eighteenth birthday.
(b) A young adult who continues with the foster family shall not be included as a child in calculating any licensing restriction on the number of children in the foster home.

(8) Implementation Plan, Steps for Effective Implementation.
(a) Program for Young Adults Formerly in Foster Care. This plan shall be used in order to develop each departmental district/region or contracted service provider specific implementation plan.
(b) Steps for Effective Implementation:
1. Departmental districts/regions and contracted service providers shall designate staff responsible for receiving inquiries about services available to young adults formerly in foster care. The departmental district/region and contracted service providers shall also develop methods to provide information about ETV, prior to their 18th birthday, to youth adopted from foster care at ages 16 and 17, and to perform outreach for those adopted since July 1, 1999.
2. District/region and/or contracted service providers shall develop a process with fiscal/budget staff to ensure expedited and/or emergency assistance is provided.
3. District/region and/or contracted service providers shall develop a tracking system for approved cash assistance payments until such time as HSN can capture this information.
4. Pursuant to Chapter 39 and Section 409.1451, Florida Statutes, district/region and community-based care agencies must inform all youth aging out of foster care, prior to age 18, of these benefits.

(9) Education and Training Voucher Funds.
(a) Education and Training Voucher (ETV) Program Requirements.
1. Young adult must have been:
   a. Adjudicated dependent, pursuant to Chapter 39, F.S., have been in the custody of the State of Florida on his or her 18th birthday and have spent at least 6 months in foster care prior to reaching his or her 18th birthday; or
   b. Adopted from the Florida foster care system at age 16 or 17 as of July 1, 1999;
2. Young adults are potentially eligible for services from age 18 through age 22.
3. Initial application must be completed before 21st birthday.
4. Benefits from this and other federal educational assistance sources may not exceed the young adult’s “cost of attendance” at an “institution of higher education,” as defined by federal statute.
5. The young adult must be attending an institution of higher education.
6. The young adult may receive a maximum of $5000 per year towards the payment of RTI Scholarship awards.
7. For a student attending an institution of higher education on a part-time basis, ETV funds of up to $5000 per year may be used to pay for Transitional Support Services.
8. The young adult shall provide proof of enrollment and satisfactory progress.
(b) Application for ETV Funds.
1. Students applying for the Road to Independence (RTI) Scholarship will use the application form “Road to Independence Scholarship and/or ETV Funds Application”, CF-FSP 5295, September 2005, incorporated by reference, unless they are attending school part-time. If determined eligible for ETV, a portion of the student’s RTI scholarship award will be covered by ETV funds. The maximum per student per year is $5000.
2. Students attending school at least part-time may receive ETV funds. These students shall complete the “Transitional Support Eligibility and/or Education Training Vouchers (ETV) Funds Application” CF-FSP 5292, September 2005, incorporated by reference, and can receive up to $5000 per year, which may be funded by ETV.
3. ETV funds are used for educational assistance currently authorized in Florida Statutes. The only new eligible group is young adults formerly in foster care adopted at age 16 or 17.
4. Chafee funds shall be used to cover the costs of Road to Independence Scholarships for high school/GED students, for those students attending institutions not meeting the federal definition of higher education, for transitional support services (exclusive of support for attendance at institutions of higher education), and for aftercare services.
5. Upon application for any independent living services, youth shall be provided with information regarding the appeal process, as well as the “Independent Living Benefits Due Process Rights” brochure, CF/PI 175-11, September 2005, incorporated by reference. This includes applications for services made in anticipation of the youth’s 18th birthday.

6SC-31.003 Aftercare Support Services for Young Adults Formerly in Foster Care.
(1) The services worker shall provide support to young adults formerly in foster care through making of service referrals in the community to assist young adults in developing “the skills and abilities necessary for independent living”.
(2) Eligibility for Aftercare Support. A young adult who leaves foster care at age 18 but requests services prior to his or her 23rd birthday shall be eligible for aftercare support services. There is no formal written application to receive aftercare support service referrals.
(3) Application Process for Aftercare Support Cash Assistance.
(a) The services worker shall assist the young adult to receive cash assistance for housing, electric, water, gas, sewer service, food, and any other provisions permitted under Section 409.1451(5)(a), F.S. Prior to arranging for the provision
Initial Application for Scholarship Eligibility. Each student, with the assistance of the services worker if requested by the young adult, shall complete an RTI Scholarship Application. This application shall be completed and signed by the student, reviewing authority and approval authority and a copy must be placed in the case file.

(a) For the initial award, a young adult formerly in foster care must:
   1. Be age 18, 19 or 20;
   2. Have been a dependent child pursuant to Chapter 39;
   3. Be or have been in the legal and/or physical custody of the Department of Children and Family Services at the time of his or her 18th birthday;
   4. Have spent at least 6 months in foster care before reaching his or her 18th birthday, which may include the time the youth spent in shelter status in state custody;
   5. Be a resident of Florida per Section 1009.40, F.S.; and
   6. Meet one of the following educational requirements:
      a. Earned a standard high school diploma or its equivalent as described in Sections 1003.43 or 1003.435, F.S., or earned a special diploma or special certificate of completion as described in Section 1003.438, F.S., and has been admitted for full-time enrollment in an eligible postsecondary education institution as defined in Section 1009.533, F.S.
      b. Is enrolled full time in an accredited high school, unless he or she has a documented disability and has provided documentation that part-time attendance is a necessary accommodation; or
      c. Is enrolled full time in an accredited adult education program designed to provide the student with a high school diploma or its equivalent, unless he or she has a documented disability and has provided documentation that part-time attendance is a necessary accommodation.

(b) In addition, young adults age 18 up to their 23rd birthday who were adopted from foster care at age 16 or 17 and are attending an institution of higher education, whether on a full or part time basis, and meet the other criteria set forth for scholarship eligibility are eligible to receive the scholarship award. The same application shall be used for children adopted at age 16 or 17 applying for ETV funds. These funds are intended to assist in meeting the student’s living expenses or provide for basic personal needs.

(c) Application Process for Scholarship.
   1. The services worker shall assist each youth between the ages 17 years, 6 months and 18 years of age to apply for the Road to Independence Scholarship. The youth shall:
      a. Complete the application.
      b. Obtain document of proof of enrollment.
   2. Each departmental district/region or contracted service provider shall designate a services worker to assist each young adult applying for or receiving independent living services. The young adult shall submit his or her application to the Independent Living services worker designated by the department or its contracted service provider. The Independent Living services worker shall have 10 working days to review the application and approve or deny the scholarship award or, if not the approval authority, shall forward the request to the approval authority early enough to have it approved within the ten-day period.

3. If approved, the services worker or Independent Living services worker shall notify the youth in writing within 10 working days of the determination. The monthly scholarship award shall be distributed at the beginning of the month that the recipient turns 18 years of age or, if approval occurs after the youth’s 18th birthday, at the beginning of the next month following approval of the application. For youth approved prior to their 18th birthday, the first monthly scholarship award shall not be prorated regardless of the day of the month recipient turns 18 years of age.

4. If the application is denied, the services worker or services worker shall notify the youth in writing within 10 working days of the determination and shall provide the youth the procedure for filing an appeal and the “Independent Living Benefits Due Process Rights” brochure, CF/PI 175-11, September 2005, incorporated by reference, and notify the youth of other available benefits, including transitional support services or aftercare support.

5. If a young adult formerly in foster care did not complete the application process prior to his or her 18th birthday, or if the application was not approved, the young adult may apply once prior to his or her 21st birthday. The eligibility requirements contained in paragraph 65C-31.004(1)(a), F.A.C., apply. No retroactive benefits are available due to delayed completion of the application process by the youth.

Scholarship Renewal. The services worker shall evaluate for renewal each scholarship award annually during the 90-day period before the student’s birthday. In order to be eligible for a renewal award for the subsequent year the student shall:

(a) Complete the number of hours, or the equivalent considered full time by the educational institution, in the last academic year in which the young adult earned a scholarship, except for a young adult who meets the requirements of Section 1009.41, F.S.

(b) Maintain appropriate progress as required by the educational institution, except that, if the young adult’s progress is insufficient to renew the scholarship at any time during the eligibility period, the young adult may restore eligibility by improving his or her progress to the required level.

Scholarship Reinstatement. A student who has lost eligibility for the RTI scholarship or who choose not to renew the award may apply for reinstatement one time before his or her 23rd birthday using “Road to Independence Scholarship and/or Education Training Vouchers (ETV) Funds Reinstatement Application”, CF-FSP 5297, September 2005, incorporated by reference. In order to be eligible for reinstatement the student must meet the eligibility criteria and the criteria for scholarship renewal.

RTI Scholarship Needs Assessment. An RTI Needs Assessment must be completed on each student who has been awarded the RTI scholarship.

(a) State Requirements. The amount of the award, whether it is being used by a young adult working toward completion of a high school diploma or its equivalent or working toward completion of a postsecondary education program, shall be determined based on an assessment of the funding needs of the young adult. This assessment shall consider the...
young adult’s living and educational costs and other grants, scholarships, waivers, earnings, and other income to be received by the young adult.

(b) Federal Requirements. The total amount of ETV funds and any other federal educational assistance to the young adult shall not exceed the young adult’s cost of attendance.

(5) Payment Requirements for Scholarship Recipients.

(a) The services worker responsible for the case shall determine how the monthly scholarship awards will be paid according to either of the two following methods:
1. Direct payment to the young adult,
2. Payment of a portion of the scholarship award to a service provider and the balance to the young adult, if requested by the young adult. If the young adult makes this request, it must be made in writing.

(b) ETV funds are available pursuant to the following:
1. For students attending an institution of higher education, including community college, university or vocational education courses. High school or GED attendance does not qualify.
2. For youth adopted at age 16 or 17 from foster care who are attending an institution of higher learning.
3. Part-time attendance at an institution of higher education may qualify young adults under Florida’s transitional support services component.

(c) Renewal of Road to Independence Scholarships.
1. Young adults formerly in foster care are required to renew their scholarships on an annual basis.
2. Departmental districts/regions or contracted service provider agencies shall develop a plan for renewal of scholarships. At a minimum, the plan shall address the tracking and scheduling of scholarship renewals and those staff responsible for notifying these activities as well as notifying the scholarship recipient of his or her obligations during the renewal period.
3. Each approved award shall be evaluated and renewed during the 90-day period prior to the young adult’s birthday.
4. If the young adult is awarded a scholarship within 90 days prior to his or her next birthday, he/she is not required to file for renewal until the following birthday.
5. For young adults who were adopted from foster care at age 16 or 17, the same procedures established above shall be followed when renewing their ETV funds.

(d) Eligibility to Renew Road to Independence Scholarships. The young adult shall:
1. Make one application for the initial award prior to his or her 21st birthday.
2. Complete the number of hours, or the equivalent considered full-time by the educational institution, in the last academic year in which the young adult earned a scholarship, except for a young adult who meets the requirements of Section 1009.41, F.S.
3. Maintain appropriate progress as required by the educational institution, except that, if the young adult’s progress is insufficient to renew the scholarship at any time during the eligibility period, the young adult may restore eligibility by improving his or her progress to the required level.

(e) Documentation Requirements for Scholarship Recipients. All eligible recipients shall:
1. Provide documentation of enrollment in a high school or institution of higher education; and
2. Provide documentation of progress made in his or her course of study during the most recently completed school term.

65C-31.006 Young Adult Services Documentation Requirements.

(1) General Documentation Requirements.

(a) Pursuant to federal documentation requirements, for each young adult receiving funding from the Road to Independence Scholarship, transitional support services and/or aftercare support services the department or its contracted service provider shall have an active case and a case file containing at minimum:
1. A document that contains current demographic information on the student such as, name, address, DOB, social security number, school attending, etc.
2. Completed applications signed by the young adult and review and approval authorities.
3. Follow up renewal applications or evidence of review of transitional support services cases.
5. Documentation to support eligibility requirements for the services provided.

(b) When requesting documentation from the young adult, the services worker shall use “Request for Road to Independence Scholarship Documentation” CF-FSP 5302, September 2005, incorporated by reference.

(2) Documentation Requirements for Aftercare Support Services. The following documentation requirements apply to both referrals and cash assistance.

(a) Requests for Aftercare Support service referrals shall be recorded in the young adult’s case file.

(b) Requests for Aftercare support cash assistance shall be recorded in the young adult’s case file. The application shall be kept in a hard copy file.

(c) The services worker shall verify the young adult is in need of services through an eviction notice; utility cut-off notice or similar document; estimate of move-in costs, or by assessing the situation through an interview with the young adult.

(3) Documentation Requirements for Road to Independence Scholarship. The services worker or other designated staff of the department or its contracted service provider shall maintain the following documentation in the case file of each young adult receiving the Road to Independence Scholarship to verify the young adult’s eligibility for the initial application, ongoing eligibility, at renewal and for reinstatement.

(a) Initial Scholarship Approval Documentation Requirements.

In order for a student to be eligible for the Road to Independence Scholarship.

1. Documentation of application(s) for the RTI Scholarship, including the initial, renewal and reinstatement applications. The services worker shall maintain the following documentation in the case file of each young adult: a. Renewal checklists, b. Chronological entries of contacts made, c. All completed scholarship applications, including as appropriate, the initial, renewal and reinstatement applications, d. A log of financial disbursements, and e. Any other pertinent supporting documentation.

2. Documentation for Eligibility Requirements.

a. Each student, with the assistance of the services worker, shall complete an RTI Scholarship Application. This “application” shall be completed and signed by the student, reviewing authority and approval authority and a copy shall be placed in the case file.

b. Adjudication of dependency shall be documented by placement in the case file of at least one of the following documents:
(I) Adjudicatory Order if there is follow up documentation indicating that the student was placed in foster care.

(II) Dispositional Order if the order placed the student in foster care or if there is follow up documentation indicating that the student was placed in foster care.

(III) Judicial Review Order if the order indicates that the student was adjudicated dependent and placed in foster care. The Judicial Review Social Study Report shall be an acceptable source of supporting documentation if information regarding adjudication of dependency and status in foster care are mentioned in the report.

(IV) A Criminal Justice Information System (CJIS) if it is a complete report that includes adjudication date and date placed in foster care.

c. Documentation that the student was living in licensed foster care at age 18 shall be provided by placement in the case file of at least one of the following documents:

(I) Judicial Review Order or other Court Order if the order indicates that the student was living in foster care on his or her 18th birthday. The order may contain language releasing child from foster care on 18th birthday. The Judicial Review Social Study Report shall be an acceptable source of supporting documentation if information regarding adjudication of dependency and status in foster care are mentioned in the report.

(II) An Integrated Child Welfare Services Information System (ICWSIS) printout showing child in placement on 18th birthday if other supporting documentation such as orders are in the file verifying that the child was in custody of the department.

d. Documentation that the student spent at least six months in foster care before reaching his or her 18th birthday shall be provided by placement in the case file of at least one of the following documents:

(I) An Integrated Child Welfare Services Information System (ICWSIS) printout providing at least six months of residing in licensed care prior to the students 18th birthday if other supporting documentation such as orders are in the file verifying that the child was in custody of the department.

(II) A Statewide Automated Child Welfare Information System printout showing six months of licensed placement.

e. Documentation that the student is a Florida resident shall be provided by placement in the case file of at least one of the following documents:

(I) Driver's license or Florida Identification card.

(II) Document proving Florida residence, including but not limited to, a copy of an RTI check, an electric bill, a lease, a current school enrollment form.


a. Full-time enrollment by the student in university, college or community college shall be documented by placement in the case file of at least one of the following documents:

(I) A current enrollment form or letter from the institution clearly showing the student enrolled for at least 12 credit hours.

(II) If the student is enrolled fewer than 12 hours, a current enrollment form or letter from the institution stating that the student is enrolled full-time.

b. Full-time enrollment by the student in vocational school, high school or GED shall be documented by placement in the case file of an enrollment form or letter from the school that states that he or she is a full-time student.

c. Students must be able to periodically prove that they continue to be enrolled and attending school full-time. This shall be verified by placement in the case file of at least one of the following forms of documentation:

(I) A progress report from the school.

(II) Document in case notes that a school official has been contacted and has verified continued full-time enrollment of the student. The name, title, school and phone number for the school official who has been contacted shall also be included in the case note.

d. At the end of each semester the student shall provide the following documents and a copy shall be placed in the case file:

(I) A report card showing completion of classes registered for previously; and

(II) An enrollment form or letter from the educational institution showing full-time enrollment for the following semester.

(b) Scholarship Renewal Documentation Requirements.

1. For each student the services worker shall complete a “Road to Independence Scholarship and/or ETV Funds Renewal Checklist” CF-FSP 5296, September 2005, incorporated by reference. The completed checklist shall be signed by the student, reviewing authority and approval authority and a copy shall be placed in the case file.

2. The case file shall also contain:

a. Proof of full-time enrollment at the institution, unless exempted, and

b. Proof of satisfactory progress at the institution.

(c) Scholarship Reinstatement Documentation Requirements.

1. Each student who wishes to apply for reinstatement shall complete a “Road to Independence Scholarship and/or Education Training Vouchers (ETV) Funds Reinstatement Application”, CF-FSP 5297, September 2005, incorporated by reference. The completed checklist shall be signed by the student, reviewing authority and approval authority and a copy shall be placed in the case file.

2. This application shall be completed and signed by the student, reviewing authority and approval authority and a copy shall be placed in the case file.

3. The case file shall also contain:

a. Proof of eligibility,

b. Proof of full-time enrollment at the institution, unless exempted, and

c. Proof of satisfactory progress at the institution.

(d) RTI Scholarship Needs Assessment. An RTI Needs Assessment shall be completed on each student who has been awarded the RTI scholarship. See Rule 65C-31.007, F.A.C., High School Needs Assessment, and Rule 65C-31.008, F.A.C., Postsecondary Needs Assessment.

(4) Documentation Requirements for Transitional Support Services.

a. A case shall be open in the Statewide Automated Child Welfare Information System and a hard copy case folder is required for any documentation not contained in the electronic system.
(b) Staff are required to maintain the following documentation in the youth’s case file: chronological entries to document face to face contacts, phone calls, and other contacts such as letters, facsimile transmissions or e-mail correspondence, documentation of referrals for services and documentation of young adults progress in attaining his or her transition plan, including:
1. Completing the attached application,
2. Obtaining a copy of documentation of grade point average,
3. Obtaining document of proof of enrollment,
4. Performing any other specific tasks identified in transition plan.

(c) Other required documentation for Transitional Support Services that shall be maintained in the case file is:
1. The completed transitional support services application,
2. The completed transitional plan, and
3. Documentation that the young adult meets the requirements for eligibility for transitional support services.

NOTE: The following sections, entitled “Independent Living” and “Quality Parenting”, are excerpted from the most recent revisions and additions to legislation as of this writing. It is quite extensive. For the purpose of this course, it is edited to focus on social work applications, but should be viewed in its entirety at http://laws.flrules.org/2013/178.

Independent living

Citing this act as the Nancy C. Detert Common Sense and Compassion Independent Living Act, providing that when the court obtains jurisdiction over a child who has been found to be dependent, the court retains jurisdiction until the child reaches 21 years of age; providing exceptions; directing the Department of Children and Families to work in collaboration with the Board of Governors, the Florida College System, and the Department of Education to help address the need for a comprehensive support structure in the academic arena to assist young adults who have been or remain in the foster care system.

CHAPTER 2013-178
Committee Substitute for Senate Bill No. 1036
(Excerpt)

An act relating to independent living; providing a short title; amending s. 39.013, F.S.; requiring the Department of Children and Families, the community-based care provider, and others to assist a child in developing a transition plan after the child reaches 17 years of age and requiring a meeting to develop the plan; specifying requirements and procedures for the transition plan; requiring periodic review of the transition plan; requiring the court to approve the transition plan before the child leaves foster care and the court terminates jurisdiction; creating s. 39.6251, F.S.; providing definitions; providing that a young adult may remain in foster care under certain circumstances after attaining 18 years of age; specifying criteria for extended foster care; providing that the permanency goal for a young adult who chooses to remain in care is transition from care to independent living; specifying dates for eligibility for a young adult to remain in extended foster care; providing for supervised living arrangements in extended foster care; authorizing a young adult to return to foster care under certain circumstances; specifying services that must be provided to the young adult; directing the court to retain jurisdiction and hold review hearings; amending s. 39.701, F.S.; revising judicial review of foster care cases; making technical changes; providing criteria for review hearings for children younger than 18 years of age; requiring criteria for review hearings for children 17 years of age; requiring the department to verify that the child has certain documents; requiring the department to update the case plan; providing for review hearings for young adults in foster care; amending s. 409.145, F.S.; requiring the department to develop and implement a system of care for children in foster care; specifying the goals of the foster care system; requiring the department to assist foster care caregivers to achieve quality parenting; specifying the roles and responsibilities of caregivers, the department, and others; providing for transition from a caregiver; requiring information sharing; providing for the adoption and use of a “reasonable and prudent parent” standard; defining terms; providing for the application for the standard of care; providing for liability of caregivers; specifying foster care room and board rates; authorizing community-based care service providers to pay a supplemental monthly room and board payment to foster parents for providing certain services; directing the department to adopt rules; deleting obsolete provisions; amending s. 409.1451, F.S.; providing for the Road to Independence program; providing legislative findings and intent; providing for postsecondary services and supports; specifying aftercare services; providing for appeals of a determination of eligibility; providing for portability of services across county lines and between lead agencies; providing for accountability; creating the Independent Living Services Advisory Council; providing for membership and specifying the duties and functions of the council; requiring reports and recommendations; directing the department to adopt rules; amending s. 409.175; allowing for young adults remaining in care to be considered in total number of children placed in a foster home; directing the Department of Children and Families to work in collaboration with the Board of Governors, the Florida College System, and the Department of Education to help address the need for a comprehensive support structure in the academic arena to assist young adults who have been or remain in the foster care system; providing for an annual report; directing the Department of Children and Families in collaboration with the Florida Foster and Adoptive Parent Association and the Quality Parenting Initiative to develop design training for caregivers; providing effective dates.

The Quality Parenting Initiative

The second Florida law enacted in 2013 that applies to social work with dependent children and youth is the Quality Parenting Initiative. The Department of Children and Families in collaboration with the Florida Foster and Adoptive Parent Association and the Quality Parenting Initiative will design and disseminate training for caregivers on skill building on the life skills necessary for youth in the foster care system. This act shall take effect January 1, 2014 as approved by the governor June 14, 2013.

Excerpt from Section 7. Section 409.145:
(2) Quality Parenting.—A child in foster care shall be placed only with a caregiver who has the ability to care for the child, is willing to accept responsibility for providing care, and is willing and able to learn about and be respectful of the child’s culture, religion and ethnicity, special physical or psychological needs, any circumstances unique to the child, and family relationships. The department, the community-based care lead agency, and other agencies shall provide such caregiver with all available information necessary to assist the caregiver in determining whether he or she is able to appropriately care for a particular child.
(a) Roles and responsibilities of caregivers. A caregiver shall:
1. Participate in developing the case plan for the child and his or her family and work with others involved in his
or her care to implement this plan. This participation includes the caregiver’s involvement in all team meetings or court hearings related to the child’s care.

2. Complete all training needed to improve skills in parenting a child who has experienced trauma due to neglect, abuse, or separation from home, to meet the child’s special needs, and to work effectively with child welfare agencies, the court, the schools, and other community and governmental agencies.

3. Respect and support the child’s ties to members of his or her biological family and assist the child in maintaining allowable visitation and other forms of communication.

4. Effectively advocate for the child in the caregiver’s care with the child welfare system, the court, and community agencies, including the school, childcare, health and mental health providers, and employers.

5. Participate fully in the child’s medical, psychological, and dental care as the caregiver would for his or her biological child.

6. Support the child’s school success by participating in school activities and meetings, including individual education plan meetings, assisting with school assignments, supporting tutoring programs, meeting with teachers and working with an educational surrogate if one has been appointed, and encouraging the child’s participation in extracurricular activities.

7. Work in partnership with other stakeholders to obtain and maintain records that are important to the child’s well-being, including child resource records, medical records, school records, photographs, and records of special events and achievements.

8. Ensure that the child in the caregiver’s care who is between 13 and 17 years of age learns and masters independent living skills.

9. Ensure that the child in the caregiver’s care is aware of the requirements and benefits of the Road to Independence Program.

10. Work to enable the child in the caregiver’s care to establish and maintain naturally occurring mentoring relationships.

(b) Roles and responsibilities of the department, the community-based care lead agency, and other agency staff. The department, the community-based care lead agency, and other agency staff shall:

1. Include a caregiver in the development and implementation of the case plan for the child and his or her family. The caregiver shall be authorized to participate in all team meetings or court hearings related to the child’s care and future plans. The caregiver’s participation shall be facilitated through timely notification, an inclusive process, and alternative methods for participation for a caregiver who cannot be physically present.

2. Develop and make available to the caregiver the information, services, training, and support that the caregiver needs to improve his or her skills in parenting children who have experienced trauma due to neglect, abuse, or separation from home, to meet these children’s special needs and to advocate effectively with child welfare agencies, the courts, schools, and other community and governmental agencies.

3. Provide the caregiver with all information related to services and other benefits that are available to the child.

Section 7. Section 409.145 further states:

(d) Information Sharing — Whenever a foster home or residential group home assumes responsibility for the care of a child, the department and any additional providers shall make available to the caregiver as soon as is practicable all relevant information concerning the child. Records and information that are required to be shared with caregivers include, but are not limited to:

1. Medical, dental, psychological, psychiatric, and behavioral history, as well as ongoing evaluation or treatment needs;

2. School records;

3. Copies of his or her birth certificate and, if appropriate, immigration status documents;

4. Consents signed by parents;

5. Comprehensive behavioral assessments and other social assessments;

6. Court orders;

7. Visitation and case plans;

8. Guardian ad litem reports;

9. Staffing forms; and

10. Judicial or citizen review panel reports and attachments filed with the court, except confidential medical, psychiatric, and psychological information regarding any party or participant other than the child.

Section 7. Section 409.145 also states:

(3) Reasonable and Prudent Parent Standard. —

(c) Verification of services delivered. The department and each community-based care lead agency shall verify that private agencies providing out-of-home care services to dependent children have policies in place which are consistent with this section and that these agencies promote and protect the ability of dependent children to participate in age-appropriate extracurricular, enrichment, and social activities.

The statutes continue with directives to develop programs so young adults leaving dependency care have support to enter postsecondary education and other support services. It outlines eligibility requirements for aftercare.

Excerpt from Section 8. Section 409.1451 The Road-to-Independence Program.—

(1) Legislative Findings and Intent. —

(a) The Legislature recognizes that most children and young adults are resilient and, with adequate support, can expect to be successful as independent adults. Not unlike many young adults, some young adults who have lived in foster care need additional support and resources for a period of time after reaching 18 years of age.

(b) The Legislature finds that while it is important to provide young adults who have lived in foster care with education and independent living skills, there is also a need to focus more broadly on creating and preserving family relationships so that young adults have a permanent connection with at least one committed adult who provides a safe and stable parenting relationship.

(c) It is the intent of the Legislature that young adults who choose to participate in the program receive the skills, education, and support necessary to become self-sufficient and leave foster care with a lifelong connection to a supportive adult through the Road to Independence program, either through postsecondary education services and support, as provided in subsection (2), or aftercare services.
The Tarasoff Case in California changed many laws across the country governing the disclosure of information by mental health practitioners. That case resulted from a university therapist, supervisor, law enforcement agency and mental health facility that worked with a client deemed dangerous. The client ultimately left therapy, was released from a treatment facility, moved away and later committed a murder. This is an oversimplification, but the case led to changes in the language and responsibility for practitioners to warn individuals who may be harmed by present or former clients.

This, of course, requires the disclosure of information that normally would be considered confidential between provider and client. All 50 states have addressed the duty to warn but some jurisdictions do not mandate the responsibility to warn or restrict the disclosure. The Florida Statute indicates that confidential communication between the licensed or certified mental health worker and the patient or client may be waived in these cases.

The Florida Court of Appeal decision in the case of in Green v. Ross (1997) held that the permissive language of this statute and the use of the word may did not create or confirm the duty to warn, and no cause of action could be taken for failure to warn in the case against a mental health worker (Tapp and Payne, 2011). That decision was based on a prior Florida appellate decision, Boynton v. Burglass in 1991, which dismissed a plaintiff’s complaint for failure to state a cause of action against a psychiatrist under an alleged duty to warn (ibid).

The court case cited above supported the view that the Florida statute is more permissive than some other states’ because the disclosure of confidential information is permitted but not required. This applies even in cases of potential harm and duty to warn a person who may be a target of attack by a client.

Florida Statutes govern confidentiality and privileged communication along with the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA governs the privacy and security of patient information that may be shared by social workers, including information from case management notes.

HIPAA is an extensive and detailed piece of federal legislation that contains directives for the security of patient protected health information (PHI), including the electronic transmission of information. Because conflicts may arise between social workers’ duty to protect client confidentiality and the duty to warn against clients’ potential to harm themselves or others, the 2013 U.S. Department of Health and Human Services (HHS) provided statements that apply to health care providers, including social workers.

The HIPAA Privacy Rule does not prevent the ability to disclose necessary information about a patient to law enforcement, family members of the patient, or other persons, when the provider believes the patient presents a serious danger to himself or other people. HIPAA allows the provider, consistent with applicable law and standards of ethical conduct, to alert those persons whom the provider believes are reasonably able to prevent or lessen the threat.

Law 45 CFR § 164.512(j) and Fl. S. 491.0147 allow social workers, mental health counselors and marriage and family therapists to disclose or share a client’s PHI if they believe in good faith that the disclosure of information “may prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.”

This is referred to as “duty to warn or avert harm.” According to the NASW Ethics Board (Morgan, 2013) the social worker’s “good-faith belief” is one based upon the practitioner’s “actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority,” such as a family member or other person (HHS, 2013).

Social workers may learn information directly or indirectly that they believe warrants further investigation or action and then must decide what action to take in this critical area. The NASW instructs in the Code of Ethics that these decisions should never be made without consultation with the agency supervisor, clinical social worker or colleagues, NASW, state board and other governing agencies, stressing the urgency in these cases.

The American Mental Health Counseling Association Code of Ethics (AMHCA) 2010 revision provides the following information on disclosure of information related to the duty to warn:

The release of information without consent of the client may only take place under the most extreme circumstances: the protection of life (suicidality or homicidiality), child abuse, and/ or abuse of incompetent persons and elder abuse. Above all, mental health counselors are required to comply with state and federal statutes concerning mandated reporting.

- d) Mental health counselors (or their staff members) do not release information by request unless accompanied by a specific release of information or a valid court order. Mental health counselors make every attempt to release only information necessary to comply with the request or valid court order. Mental health counselors are advised to seek legal advice upon receiving a subpoena in order to respond appropriately.

- f) If clients are in danger, such as domestic violence or suicidality, mental health counselors take steps to secure a safety plan, refer to appropriate resources, and if necessary contact appropriate support.

- n) Mental health counselors may justify disclosing information to identifiable third parties if clients disclose that they have a communicable or life threatening illness. However, prior to disclosing such information, mental health counselors must confirm the diagnosis with a medical provider. The intent of clients to inform a third party about their illness and to engage in possible behaviors that could be harmful to an identifiable third party must be assessed as part of the process of determining whether a disclosure should be made to identifiable third parties.

The American Association for Marriage and Family Therapy (AAMFT) 2012 update does not specifically address disclosure of confidential information concerning the duty to warn but provides the following related guidelines:

Both law and ethics govern the practice of marriage and family therapy. When making decisions regarding professional behavior, marriage and family therapists must consider the AAMFT Code of Ethics and applicable laws and regulations. If the AAMFT Code of Ethics prescribes a standard higher than that required by law, marriage and family therapists must meet the higher standard of the AAMFT Code of Ethics. Marriage and family therapists comply with the mandates of law, but make known their commitment to the AAMFT Code of Ethics and take steps to resolve the conflict in a responsible manner. The AAMFT supports legal mandates for reporting of alleged unethical conduct.

2.1 Disclosing Limits of Confidentiality. Marriage and family therapists disclose to clients and other interested parties, as early as feasible in their professional contacts, the nature of confidentiality and possible limitations of the clients’ right to confidentiality. Therapists review with clients the circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. Circumstances may necessitate repeated disclosures.

2.2 Written Authorization to Release Client Information. Marriage and family therapists do not disclose client confidences except by written authorization or waiver, or where mandated or permitted by
law. Verbal authorization will not be sufficient except in emergency situations, unless prohibited by law. When providing couple, family or group treatment, the therapist does not disclose information outside the treatment context without a written authorization from each individual competent to execute a waiver. In the context of couple, family or group treatment, the therapist may not reveal any individual’s confidences to others in the client unit without the prior written permission of that individual.

The state of Florida enacted law that allows social workers to disclose information in accordance with the HHS directive, with some constraints. The Florida Statute allows disclosures by clinical social workers to alert the “police, a parent or other family member, school administrators or campus police, and others who may be able to intervene to avert harm from the threat.”

The Florida Statute says, “The confidentiality between a clinical social worker may be waived when there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society, and the clinical social worker communicates the information only to the potential victim, appropriate family members, or law enforcement or other appropriate authorities.” (Fla. Stat. 491.0147(3).

There are two major discrepancies between the Florida Statutes and the HIPAA Privacy Rule. HIPAA allows for the disclosure of PHI without the client’s authorization or consent in some special circumstances, including payment for health care services, or to law enforcement for the investigation of criminal activity, including abuse that has happened or potentially could happen in the future. The Florida Statutes do not allow disclosure of information as follows:

1. “Medical records, including those related to mental health, may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient’s legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient.” (Fla. Statute 456.057(7) (a). The confidentiality between a clinical social worker, mental health counselor, or psychotherapist may be waived when there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society, and the clinical social worker, mental health counselor, or psychotherapist communicates the information only to the potential victim, appropriate family members, or law enforcement or other appropriate authorities. (Fla. Stat. 491.0147(3). (UF, 2013).

2. No exception is provided for disclosure of PHI to insurance companies for purposes of payment, or to law enforcement officials for an investigation. According to Florida Statutes, the social work agency is not allowed to confirm that the client has ever received services at all (UF, 2013).

In contrast to the Florida statutes, psychotherapy or case notes can be disclosed, but have some exclusions under HIPAA. Case notes include any notes that social workers take for their own use, rather than standard or general documentation required in all cases. Under HIPAA, these notes require consent or a waiver signed by clients before they can be disclosed. Signed consent forms for authorizing the release of medical records do not cover psychotherapy or case notes unless the document specifically includes them in the consent form. These notes must be stored separately from the client’s records, and it is the decision of the social worker to decide whether to keep and store the notes.

Because Florida law may lead to confusion and is one of the states that fall short of a clear requirement to warn, there are some guidelines to follow that have been effective in these situations. Reamer (2003) outlines 10 steps that may be followed when a social worker has reason to believe that a client poses a threat to another party:

1. Consult an attorney who is familiar with state law on the duty to warn or protect third parties.
2. Consider asking the client to warn the victim (unless the social worker believes this contact would only increase the risk).
3. Seek the client’s consent for the social worker to warn a potential victim.
4. Disclose only the minimum amount necessary to protect the potential victim and the public.
5. Encourage the client to agree to a joint session with the potential victim to discuss the issues surrounding the threat (unless this might increase the risk).
6. Encourage the client to surrender any weapons he or she may have.
7. Increase the frequency of therapeutic sessions and other forms of monitoring.
8. Be available or have a backup available, at least by telephone.
9. Refer the client to a psychiatrist if medication might be appropriate and helpful or if a psychiatric evaluation appears to be warranted.
10. Consider hospitalization, preferably voluntary, if appropriate.

When making decisions about disclosure of PHI, HIPAA and the Florida Statutes must be reviewed. The University of Florida Legal department has researched these areas and suggests the following:

The HIPAA Privacy Rule provides an extensive list of permitted disclosures, however, where Florida State Statutes provide greater privacy protections or privacy rights with respect to patients’ PHI, state laws will apply, overriding HIPAA (UF, 2013). The Florida Statutes and HIPAA are in agreement with the mandatory requirement to disclose the following information:

- Gunshot wounds and life-threatening injuries.
  - A physician, nurse, or employee of a hospital, sanitarium, clinic, or nursing home treating or receiving a request for treatment to report immediately to local law enforcement officials any gunshot wound or life-threatening injury indicating an act of violence. (Statute 790.24).

- Suspected child abuse.
  - Any person, including a health care provider, who knows or has reasonable cause to suspect child abuse, abandonment or neglect by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare, to report such knowledge or suspicion to the Department of Children and Families (DCF) Central Abuse Hotline. (Fla. Stat. 39.201(1).

- Vulnerable adult abuse.
  - Any person who knows or has reasonable cause to suspect the abuse, neglect or exploitation of vulnerable adults to immediately report such knowledge to the DCF Central Abuse Hotline. (Fla. Stat. 415.1034(2).

- Sexual battery.
  - Two Florida Statutes cover reporting of a crime of sexual battery.
    - Any person who observed the commission of a crime of sexual battery must immediately report such offense to a law enforcement official. (Fla. Stat. 794.027).
    - Florida’s School Law mandates instructional personnel or administrative personnel having knowledge that a sexual battery has been committed by a student upon another student to report the offense to a law enforcement agency having jurisdiction over the school or over the place where the sexual battery occurred, if not on the grounds of the school. (Fla. Stat. 1012.799).
    - This covers the social worker regardless of whether the school or an outside agency employs them.

- Deaths.
  - Any person who has reasonable cause to suspect that a child died as a result of child abuse, abandonment, or neglect is required to report his or her suspicion to the appropriate medical examiner. (Fla. Stat. 39.201(3).
  - Any person in the district where a death occurs who becomes aware of the death of any person in the state occurring under the following circumstances, is required to
 HIPAA and the use of long-distance technology in service delivery

HIPAA Privacy Rules apply to the delivery of service to clients using electronic systems over distances when direct service with clients is difficult. This allows the practitioner to reach more clients without expending time for travel and to reach clients in rural or underserved areas.

Skype is one of the most popular and widely used electronic systems used in the field of social work as well as for the delivery of medical and mental health services. After considerable study over the past two years, the NASW has drawn some conclusions about the use of technology as it relates to HIPAA federal Privacy Rules, which must be followed in all states. The NASW, ASWB, AAMFT, AMHCA and HIPAA codes of ethics address the use of electronic systems, and these documents should be studied in detail. A brief summary of the guidelines from these organizations is included to for purposes of comparison.

The AAMFT Code of Ethics includes the following guidelines on the use of technology in therapy services:

1.14 Electronic Therapy. Prior to commencing therapy services through electronic means (including but not limited to phone and Internet), marriage and family therapists ensure that they are compliant with all relevant laws for the delivery of such services. Additionally, marriage and family therapists must: (a) determine that electronic therapy is appropriate for clients, taking into account the clients’ intellectual, emotional, and physical needs; (b) inform clients of the potential risks and benefits associated with electronic therapy; (c) ensure the security of their communication medium; and (d) only commence electronic therapy after appropriate education, training, or supervised experience using the relevant technology.

The AMHCA Code of Ethics (2010) provides the following directives related to the use of technology in counseling:

6. Technology-Assisted Counseling
Technology-assisted counseling includes but is not limited to computer, telephone, internet and other communication devices. Mental health counselors take reasonable steps to protect patients, clients, students, research participants and others from harm. Mental health counselors performing technology-assisted counseling comply with all other provisions of this Ethics Code. Mental health counselors:

a) Establish methods to ascertain the client’s identity and obtain alternative methods of contacting the client in an electronic emergency.

b) Electronically transfer client confidential information to authorized third-party recipients only when both the mental health counselor and the authorized recipient have secure transfer and acceptance capabilities as state and federal laws regulate.

c) Ensure that clients are intellectually, emotionally, and physically capable of using technology-assisted counseling services, and of understanding the potential risks and/or limitations of such services.

d) Provide technology-assisted counseling services only in practice areas within their expertise. Mental health counselors do not provide services to clients in states where doing so would violate local licensure laws or regulations.

e) Confirm that the provision of technology-assisted counseling services are not prohibited by or otherwise violate any applicable state or local statutes, rules, regulations or ordinances, codes of professional membership organizations and certifying boards, and/or codes of state licensing boards.

- Disclosures to law enforcement.
  - Florida Statutes direct medical records be furnished in any case or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction, provided proper notice is given to the patient or the patient’s legal representative by the party seeking such records. (Fla. Stat. 456.057(7)(a)(3).

- Disabled drivers.
  - Any physician, person or agency having knowledge of any licensed drivers or applicant’s mental or physical disability to drive or need to obtain or to wear a medical ID bracelet is authorized to report such knowledge to the Department of Highway Safety and Motor Vehicles. The report should be in writing and limited to full name, DOB, address and description of the alleged disability of any person over 15 years of age having mental or physical disorders that could affect his or her driving ability. (Fla. Stat. 322.126(2).

- DUI and motor vehicle accidents.
  - When any health care provider who is providing medical care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of medical treatment, that the person’s blood-alcohol levels meet or exceed 0.08 grams of alcohol per 100 ml. of blood, the health care provider may notify any law enforcement officer or law enforcement agency. The notice must be given within a reasonable time after the health care provider receives the test result. The notice is limited to the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level indicated by the test and the date and time of the administration of the test (Fla. Stat. 316.1933 (2)(a).

- Worker’s Compensation.
  - Florida Statutes mandate, upon the request of the employer, the carrier, an authorized, qualified rehabilitation provider, or the attorney for the employer or carrier, that the medical records of an injured employee be furnished to those persons and the medical condition of the injured employees be discussed with those persons, if the records and the discussions are restricted to conditions relating to the workplace injury. (Fla. Stat. 440.13(4)(c).
A two-part NASW study on the use of Skype in social work provided the following information (Morgan, 2003):

- In the practice of clinical social work, if client billing to health insurance is done electronically, including a billing service that bills electronically and clients who self-pay, HIPAA rules apply to all confidential client information.
- The social worker, as a covered entity under HIPAA, must comply with security measures that cover PHI that is stored or transmitted electronically. In most cases, Skype transmissions include confidential client PHI, and when used by a social worker, HIPAA rules are in force. (45 CFR § 160.103).
  - HIPAA rules protect the confidentiality and integrity of all electronic systems the social worker assembles, stores, receives, maintains, shares or transmits that include client’s PHI. This includes all visual, audio and audiovisual transmissions used in Skype and other teleconference transmission.
  - The social worker is required by HIPAA to take measures to guard against any anticipated threats to the security and privacy of the client’s PHI which may occur due to human errors, system error, or security breach.
  - HIPAA rules cover the social worker and all colleagues, staff, associates, and anyone who receives PHI electronically, so all are required to protect the privacy and security of clients’ PHI.
  - Social workers must be knowledgeable about the procedures and policies designed to protect PHI that is stored and transmitted using all forms of technology. The computer that is used to Skype or transmit information may have additional PHI stored for other clients as well.
  - The company that developed Skype recently stated that no type of counseling or therapy practice that includes PHI should be conducted using Skype because of privacy concerns and possible breach of security.
  - Skype is not a system that was designed for the delivery of secure PHI in social services; the company prohibits the practice; and PHI and confidential, privileged communication is not secure using this system.
  - Social workers’ licenses only cover practice in Florida, so the use of Skype across state lines may be a liability issue and could affect the malpractice insurance coverage they carry.

The American Psychological Association (APA) has said: Skype is not an encrypted site and is, therefore, not a confidential means of communication. Providing psychotherapy on unencrypted sites is ill advised and thus, informed consent is important. Clients may prefer to meet via Skype and express no concern about the absence of encryption. Therefore, we suggest that clients be made fully aware of the confidentiality concerns, and if they choose to meet through this medium, that the decision be documented by the psychologist (APA, 2013).

For these reasons, the use of Skype, or other videoconferencing technology not designed for health care providers, is not advised for use in the practice of social work at this time. The best-practice update from the NASW in 2013 provides the following statement about technology use:

All applicable federal, provincial, and state laws should be adhered to, including privacy and security rules that may address patient rights, confidentiality, allowable disclosure, and documentation and include requirements regarding data protection, encryption, firewalls, and password protection.

The verdict is still out, and the NASW and ASWB are in the process of researching and developing policy on technology for service delivery. There are many liability issues to consider when using Skype, e-therapy, teletherapy and other forms of technology in the practice of long-distance social work and supervision.

These include:

- Missing critical clinical information: The client may provide important information through facial expression, body language, gesture, and other nonverbal cues that may be missed through email, telephone or other electronic communication between client and social worker.
- Handling crisis situations: The therapist may miss danger signals and is so far away that distance may interfere with the client relationship. Clients may not turn to the social worker for immediate concerns or in a crisis because they believe they are too far away.
- Misrepresentations or misunderstandings: Clients may disguise, alter, misrepresent or attempt to deceive the social worker using email, phone or communication through technology that is easier to do without face-to-face contact. Both the client and social worker may miss information because of technology glitches or transmission breaks.
- Out-of-state concerns: The client may not be in the same state where the social worker is licensed, which may be prohibited by law when delivering services across state or country borders. If a client is in Florida but the social worker is not, Florida statues may not be applied or followed. Conversely, which state would handle a malpractice case alleged against the Florida social worker practicing with an out-of-state client?
- Too many clients: Technology may add speed and availability for service but may lead to case loads too large to manage effectively.
- All laws, standards, and practice guidelines from the NASW Code of Ethics and Florida Statutes must be followed as if the social worker is meeting face to face with the client. If that level of quality service cannot occur using distance technology, it should be avoided.

These are issues that must be considered, but at this time, the Florida Statutes do not cover the practice of social workers, mental health counselors, clinical social workers or marriage and family therapists licensed in Florida with clients outside the borders of the state. In addition to distance social work services to clients, many agency supervisors use distance supervision. The latest information released in 2013 from the NASW on long-distance supervision is as follows:

**Distance Supervision**

The use of technology for supervision purposes is gradually increasing. Video-conferencing is a growing technological tool used to provide supervision, especially in remote areas. Some jurisdictions allow electronic means for supervision; others may limit the amount of supervision that can be provided from a distance. When using technology to provide distance supervision, one must be aware of standards of best practice for providing this tool and be knowledgeable of the statutes and regulations governing the provision of such services. Supervisors should be aware of the risks and benefits of using technology in social work practice and implement them in the learning process for supervisees (NASW, 2013).
References

- Tarasoff v. Regents of the University of California, 108 Cal. Rptr. 878 (Ct. App. 1973); Reversed and Remanded, 13 Cal.3d 177 (1974); modified, 17 Cal.3d 425 (1977)
- Rothschild v. Regents of the University of California, 108 Cal. Rptr. 878 (Ct. App. 1973); Reversed and Remanded, 13 Cal.3d 177 (1974); modified, 17 Cal.3d 425 (1977)

Resources for further information

Clinical Social Work
Association of Social Work Boards (ASWB) Phone: 800.255.6880 | Fax: 540.829.0142 info@aswb.org
National Association of Social Work (NASW) – Florida Chapter Phone: 850.224.2400 | Fax: 850.561.6279 naswfl@naswfl.org
Mental Health Counseling
American Counseling Association (ACA) Phone: 800.347.6647 | Fax: 800.473.2329 Questions: ACA Web Idea Bank – Frequently Asked Questions
American Mental Health Counselor Association (AMHCA) Phone: 800.326.2642 | Fax: 703.548.4775 Contact: http://www.amhca.org/service/contact.aspx
Florida Counseling Association (FCA) Phone: 305.814.9460 FLacounseling@gmail.com or FCOffice@aol.com
Florida Mental Health Counselor Association (FMHCA) Phone: 813.221.5466 elvislester@flmhca.com
National Board of Certified Counselors (NBCC) Phone: 336.574.0607 | Fax: 336.574.0017 nbcc@nbcc.org

National Association of Social Workers

National Association of Social Work (NASW) – Florida
National Association of Social Work (NASW) – Florida Chapter Phone: 850.224.2400 | Fax: 850.561.6279 naswfl@naswfl.org

References

Final Examination Questions
Select the best answer for each question and mark your answers on the answer sheet found on page 147 or complete your test online at SocialWork.EliteCME.com.

1. Any communication between any person licensed or certified under this chapter and her or his patient or client shall be confidential. This secrecy may be waived when the person licensed or certified under this chapter is a party defendant to a civil, criminal, or disciplinary action arising from a complaint filed by the patient or client.
   a. True.
   b. False.

2. Private instructional personnel collaboration may supplant the school district’s responsibilities under the Individuals with Disabilities Education Act.
   a. True.
   b. False.

3. Under the Quality Parenting Initiative, roles and responsibilities of caregivers, a caregiver shall not be allowed to participate in developing a case plan for the child.
   a. True.
   b. False.

4. Whenever a foster home or residential group home assumes responsibility for the care of a child, the department and any additional providers shall make available to the caregiver as soon as is practicable all medical, dental, psychological, psychiatric, and behavioral history, as well as ongoing evaluation or treatment needs.
   a. True.
   b. False.

5. The Florida Statute indicates that confidential communication between the licensed or certified mental health worker and the patient or client may be waived in duty to warn cases.
   a. True.
   b. False.