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## CHAPTER 32

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# THE BAKER ACT: MENTAL HEALTH

by  
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### SCOPE

This chapter discusses Florida's Baker Act, the law which allows the involuntary commitment of individuals who poses a danger to themselves or to others because of mental illness. The requirements of a Baker Act proceeding and the procedures that must be followed are reviewed.

### SYNOPSIS

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### §32.06 References

#### §32.01 History

The Florida Statutes on mental health were consisted of a hodgepodge of unorganized and non-comprehensive until 1971, when the Florida Legislature passed the Florida Mental Health Act. The Florida Mental Health Act is commonly referred to as the Baker Act, for the state representative who sponsored the Act. Since its original enactment, the Baker Act has been emended several times, most recently in 1996, to incorporate better civil and due process rights for mental health patients. Among other things, the 1996 amendments extended these rights and protections to patients who voluntarily seek treatment.

#### §32.02 Oversight

Section 394.057, Florida Statutes, designates the Department of Children and Family Services (DCF) as the “Mental Health Authority” of Florida. DCF and the Agency for Health Care Administration (AHCA) are charged with the supervision of all mental health facilities, programs and services.

DCF is responsible for designing, assessing and implementing Florida's mental health program, which includes community services, receiving and treating facilities, research and training. DCF also has rule-making responsibility for implementing the Baker Act. Accordingly, DCF developed rules relating to patient rights, implementation and administration of the Baker Act, minimum standards for services, education and experience standards for mental health professionals and employees.

In addition to supervision and reporting requirements, AHCA has responsibility for enforcement of the patient rights provision of the Baker Act. DCF is required to report such violations to AHCA and AHCA is authorized to impose any sanction authorized for violation of the patient rights provision, based solely on the investigation and findings of DCF.

Additionally, Section 394.4595, Florida Statutes, provides that any member of the Florida statewide or local advocacy councils must be given access to any patient and the clinical and legal records of any patient admitted. Facilities must notify the local advocacy council of a patient's involuntary admission council no later than the next working day after the patient is admitted.

### **§32.03 Patient Rights**

The Baker Act provides mental health patients with the following nine (9) fundamental rights: individual dignity; right to receive treatment; express and informed consent; quality treatment; communication, abuse reporting and visits; care and custody of personal effects; voting in public elections; habeas corpus; and treatment and discharge planning. Each facility must post a notice of these rights. These rights are discussed briefly below.

#### **[1] Individual Dignity**

Patients have the right to be treated with dignity at all times, including any occasion when the patient is taken into custody, held, or transported. This right includes maintaining and respecting a patient's constitutional rights. Respecting a patient's dignity also includes not treating a patient as if he or she were a criminal by using those procedures, facilities, vehicles, and restraining devices utilized for criminals or those accused of crime unless such devices, procedures, facilities or vehicles are required to protect the patient or others.

#### **[2] Right to Receive Treatment**

Mental health patients may not be denied treatment for mental illness nor may services be delayed because of inability to pay. Mental health patients also have the right to receive the least restrictive treatment appropriate for their illnesses. An individualized treatment plan must be developed within five (5) days after admission to a facility, and the patient must be given an opportunity to assist with preparation for the treatment plan. Additionally, a physical examination must be given within twenty-

four (24) hours after arrival at a facility for any patient remaining at the facility for more than twelve (12) hours.

**[3] Express and Informed Consent**

Generally, each patient entering a facility must give express and informed consent for admission and treatment. However, if the patient has been adjudicated incapacitated or found to be incompetent to consent to treatment, express and informed consent is obtained from the patient's guardian or guardian advocate.

In order to obtain informed consent, the facility must provide certain information to the patient, including the reason for admission, the proposed treatment, the purpose of the treatment, the common side effects thereof, alternative treatment modalities, and the approximate length of care. In addition, the facility must inform the patient that any consent given by a patient may be revoked orally or in writing prior to or during the treatment period.

Additional information on informed consent may be found in the chapter entitled, Informed Consent, in this manual.

**[4] Quality Treatment**

Each patient in a facility must receive the medical, vocational, social, educational, and rehabilitative services required by his or her needs. Services must be administered skillfully, safely, and humanely. Facilities are required to develop procedures for use of restraint, seclusion, or isolation. In addition, facilities must develop and adopt a process for complaint resolution.

**[5] Communication, Abuse Reporting and Visits**

Mental health patients have the right to communicate freely and privately with persons outside the facility, unless the communication is likely to be harmful to the patient or others. This right includes access to a telephone. Additionally, mental health patients have the right receive, send, and mail sealed, unopened correspondence. Mail may only be opened, delayed, held, or censored by the facility when there is reason to believe that it contains items or substances which may be harmful to the patient or others. Written notice is required if a patient's right to communicate or to receive visitors is restricted by the facility. The written notice must also be recorded in the patient's medical record. Any restriction must be reviewed at least every seven (7) days. A patient's access to the telephone to report abuse may not be restricted.

**[6] Care and Custody of Personal Effects**

A patient's clothing and personal effects may only be taken from a patient for medical and safety reasons. If a facility takes the patient's clothing and personal effects for

medical or safety reasons, the clothing and personal effects must be inventoried and witnessed by two members of the facility staff and by the patient, if possible.

**[7] Voting in Public Elections**

Patients who are eligible to vote have the right to vote in primary and general elections. This right includes the right to register to vote.

**[8] Habeas Corpus**

A patient, or a relative, friend, guardian, guardian advocate, representative, or attorney, or the department, on behalf of the patient, may petition for a writ of habeas corpus to question the cause and legality of the patient's detention, unjust denial of any right or privilege or abuse of a procedure, authorized by the Baker Act. 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.

**[9] Treatment and Discharge Planning**

Each mental health patient is guaranteed the opportunity to participate in treatment and discharge planning. Upon discharge, each patient has the right to written notification of his or her right to seek treatment from the professional or agency of the patient's choice.

**§32.04 Voluntary Admission**

An adult may be voluntarily admitted to a facility under the following circumstances:

1. There is evidence that the person has a mental illness;
2. The person is competent to provide express and informed consent to the treatment; and
3. The person is suitable for treatment.

A minor may be admitted only upon application by the minor's guardian. Additionally, a hearing must be held to verify the voluntariness of the consent prior to admission.

**[1] Determining Competence to Consent**

Section 394.455(15), Florida Statutes, states that a person is considered incompetent to consent to treatment if that 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.

Certain professionals are required by Section 394.4625(1)(b), Florida Statutes, to conduct an initial assessment of particular classes of patients to determine whether

such patients have the ability to provide express and informed consent to treatment prior to a voluntary admission. The classes of patients are as follows:

1. Persons 60 years of age or older with a dementia diagnosis for whom transfer is being sought from a nursing home, assisted living facility, adult day care center, or adult family-care home;
2. Persons 60 years of age or older transferred on an emergency basis from a nursing home; and
3. Persons for whom all decisions concerning medical treatment are currently being lawfully made by the health care surrogate or proxy.

The admitting physician must evaluate and document that the patient is able to give express and informed consent in the patient's record within twenty-four (24) hours of the admission. A health care surrogate or proxy of may not consent to the provision of mental health treatment for a voluntary patient.

**[2] Discharge of Voluntary Patients**

Facilities are required to provide voluntary patients with a written notice of his or her right to request discharge at the time of admission and at least every 6 months thereafter. A facility is required by statute to discharge a voluntary patient upon the occurrence of three (3) events. Each is discussed separately below.

**[A] Improved Condition**

The patient has sufficiently improved so that retention in the facility is no longer desirable.

**[B] Requests for Discharge**

A voluntary patient or a relative, friend, or attorney of the voluntary patient may request discharge. Discharge requests may be orally or in writing. The patient must be discharged within twenty-four (24) hours of the request, unless the request is rescinded or the patient is transferred to involuntary status. If additional time is required for discharge planning, the time period may be extended, but the discharge must occur within three (3) days. Oral discharge requests must be immediately entered in the patient's clinical record. Discharge requests made by anyone other than the patient may be conditioned upon the express and informed consent of the patient. Request for discharge must be communicated to a physician, clinical psychologist, or psychiatrist within twelve (12) hours so that the patient may be assessed for involuntary placement.

**[C] Refusal to or Revocation of Consent.**

A voluntary patient who has been admitted to a facility and who refuses to consent to or revokes consent to treatment must be discharged within twenty-four (24) hours. However a facility is not required to discharge the patient if the patient is transferred to involuntary status or the patient freely and voluntarily rescinds the refusal or revocation of consent.

**§32.05 Involuntary Admissions****[1] Examination****[A] Criteria**

A person may be taken to a receiving facility<sup>1</sup> for involuntary examination if there is reason to believe that he or she is mentally ill, and because of his or her mental illness:

- a. The person has refused voluntary examination or the person is unable to determine for himself or herself whether examination is necessary; and
- b. Without care or treatment, the person is likely to suffer substantial harm due to neglect or the person will cause serious bodily harm to himself or herself or others in the near future.

**[B] Initiation of Examination**

An involuntary examination begins after one of three (3) events occurs. The following events will initiate an involuntary examination: a court order; a law enforcement officer delivers a person, who appears to meet the criteria for involuntary examination, to a receiving facility for examination; or a physician, clinical psychologist, psychiatric nurse, or clinical social worker executes a certificate stating that he or she has examined a person within the preceding forty-eight (48) hours and finds that the person appears to meet the criteria for involuntary examination.

**[C] Examination Requirements**

Once a patient arrives at a receiving facility the patient must be examined without unnecessary delay. A physician or clinical psychologist must perform the examination. Upon the order of a physician, the patient may be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others. Patient may not be released by the receiving facility without the documented approval of a psychiatrist or clinical psychologist. If a psychiatrist or clinical psychiatrist determines that the person does not meet the criteria for

involuntary placement, the finding must be entered into the patient's clinical record.

**[D] Time Periods**

A patient may not be held in a receiving facility for involuntary examination longer than seventy-two (72) hours. If the time period expires on a weekend or holiday the time period ends no later than the next working day thereafter. At the end of the seventy-two (72) period, the facility must take one of the following actions:

- a. Release the patient, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;
- b. Release the patient to outpatient treatment;
- c. Request that the patient give express and informed consent to voluntary placement, unless he or she is charged with a crime; or
- d. File a petition for involuntary placement when treatment is deemed necessary.

Within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist, the patient must be examined by a designated receiving facility and released, or the patient must be transferred to a designated receiving facility in which appropriate medical treatment is available.

**[2] Involuntary Placement**

**[A] Criteria**

In order to place a person involuntarily into treatment, a court must find upon clear and convincing evidence that the patient is mentally ill and because of his or her mental illness:

- a. The patient refused voluntary placement for treatment or the patient is unable to determine whether placement is necessary; and
- b. The patient is manifestly incapable of surviving alone or with the help of others, which, without treatment will likely result in the threat of substantial harm to the patient's well-being; or
- c. There is substantial likelihood that he or she will inflict serious bodily harm on himself or herself or another person.



In addition, the court must also find by clear and convincing evidence that all available less restrictive treatment alternatives, which would offer an opportunity for improvement, are inappropriate.

**[B] Petition for Hearing**

If the facility concludes after the involuntary examination that involuntary placement is the proper course of treatment for a patient, the facility administrator must file a petition for an involuntary placement hearing. The petition must be filed no later than the conclusion of the seventy-two (72) hour time period for involuntary examination. The petition must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding seventy-two (72) hours (there is a limited exception for rural counties).

**[C] Hearing for Involuntary Placement**

Once a petition for involuntary placement is filed, the court must hold a hearing within 5 days, unless a continuance is granted. The hearing must be as convenient to the patient as possible. The physical settings of the hearing must be unlikely to cause injury to the patient's condition. The court may excuse the presence of the patient at the hearing, if the court finds that the attendance is not consistent with the best interests of the patient and the patient's counsel does not object.

One of the professionals who supported the administrator's petition is required to be a witness. The patient has the right to an independent expert examination. If the patient cannot afford such an examination, the court shall provide for one. The patient is not required to testify at the hearing.

If the court concludes that the patient meets the criteria for involuntary placement, it shall order involuntary placement for a period of up to 6 months. The order must specify the nature and extent of the patient's mental illness. The facility is required to discharge a patient any time the patient no longer meets the criteria for involuntary placement, unless the patient has transferred to voluntary status.

**[D] Placement**

A treating facility<sup>2</sup> may refuse to accept a patient for involuntary placement if the appropriate paperwork does not accompany the patient. A receiving facility must provide the treating facility with a copy of the court order and adequate documentation of a patient's mental illness, such as a psychiatric evaluation of the patient, any evaluations of the patient performed by a clinical psychologist or a clinical social worker, and any advance directives.

[3] **Continued Involuntary Placement**

If a patient continues to meet the criteria for involuntary placement, the facility administrator must file a petition for continued involuntary placement prior to expiration of the authorized involuntary placement period. A statement from the patient's physician or clinical psychologist justifying continued placement, a brief description of the patient's treatment during the involuntary placement, and an individualized plan of continued treatment must be submitted with the petition. An administrative law judge within the Division of Administrative Hearings hears the petition.

If the administrative law judge finds that the patient continues to meet the criteria for involuntary placement, the judge must order continued involuntary placement however, the authorized period may not exceed six (6) months. The same procedure is repeated if the patient continues to meet criteria for involuntary placement prior to the expiration of each additional period the patient is retained.

[4] **Missing Patients**

When a patient at a treatment facility leaves the facility without authorization, the administrator may authorize a search for the patient. The administrator may request the assistance of a law enforcement agency in the search for and return of the patient.

[5] **Discharge**

Once a patient no longer meets the requirements for involuntary placement, the administrator of the facility has three treatment options. First, the administrator may discharge the patient. If the patient is under a criminal charge, the facility must transfer the patient to the custody of the appropriate law enforcement officer. Second, the patient may be transferred to voluntary status, unless the patient is under criminal charge or adjudicated incapacitated. Third, the administrator may place an improved patient, except a patient under a criminal charge, on convalescent status in the care of a community facility.

**§32.06 References**

<sup>1</sup> "Receiving facility" is defined as 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. Section 394.455, Fla. Stat.

<sup>2</sup> "Treatment facility" is defined as any state-owned, state-operated, or state-supported hospital, center, or clinic designated by DCF 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 DCF when rendering such services to a person under the Baker Act. Section 394.455, Fla. Stat.

Note: This article was originally published as a chapter in  
The Florida Healthcare Professionals' Medico-Legal Guide

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Published by DC Press, Sanford, Florida (2003)