

SEP 30 2020

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES DCF Department Clerk

**IN RE: PHASED REOPENING OF STATE
MENTAL HEALTH TREATMENT FACILITIES RENDITION NO.: DCF-20-190-EO
AND EMERGENCY SUSPENSION OF
STATUTES IN RESPONSE TO COVID-19
PUBLIC HEALTH EMERGENCY.**

EMERGENCY ORDER

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission; and

WHEREAS, on March 9, 2020, the Governor of the State of Florida, Ron DeSantis signed Executive Order No. 20-52, extended on May 8, 2020 and July 07, 2020, by Executive Order Nos. 20-114 and 20-166, declaring that a state of emergency exists in Florida and providing that “[e]ach state agency may suspend the provision of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of that agency, if strict compliance with the provision of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency;” and

WHEREAS, the Department seeks to continue the implementation of a phased reopening plan for admissions to the State Mental Health Treatment Facilities, which is being developed with guidance from Centers for Disease Control and Prevention (CDC) and the Department of Health (DOH) to ensure the continued safety of the individuals in care as well as to the general public; and

WHEREAS, statewide substance abuse and mental health providers (Providers) are challenged with providing services to Florida’s most vulnerable populations while experiencing programmatic difficulties related to the COVID-19 response.

NOW, THEREFORE, I, CHAD POPPELL, Secretary of the Department of Children and Families, pursuant to the authority granted by Executive Order Nos. 20-52, 20-114, and 20-166, and upon Order of the State Coordinating Officer, find the timely execution of the necessary actions, mitigation, response, and recovery aspects of the State’s emergency management plan, as it relates to COVID-19, is prevented, hindered, or delayed by the application of certain regulatory statutes, rules or orders related to the Department, and promulgate the following:

1. DCF Phase 2 – Reopening Plan

In continued concert with guidance provided by the Centers for Disease Control and Prevention (CDC), Department of Health (DOH), and the Florida Surgeon General and State Health Officer, the Department will begin implementing Phase 2 (“DCF Phase 2”) of its reopening plan on October 01, 2020, and will continue as follows:

A. Admission Capacity

i. The Department will proceed with DCF Phase 2 of admissions to selected State Mental Health Treatment Facilities as determined by the Department. During DCF Phase 2, the Department may continue to limit the number of admissions to ensure the adopted quarantine measures within the State Mental Health Treatment facilities are sufficient to maintain the health, safety, and well-being of the individuals being served, the employees, and the community at-large. Such limitations shall be at the sole discretion of the Department.

ii. The Department will continue admissions for juveniles committed to the Department, pursuant to section 985.16, Florida Statutes. The Department may limit the number of juvenile admissions to ensure the adopted quarantine measures

within the juvenile facilities are sufficient to maintain the health, safety, and well-being of the youth being served, the employees, and the community at-large.

iii. Subsection 916.107(1)(a), Florida Statutes, will remain suspended for the remaining facilities for the purpose of: (a) suspending the 15-day deadline for the transfer of forensic clients to a civil or forensic facility, and (b) suspending the Department's provision of training or treatment of forensic clients not yet in a civil or forensic facility, on a date not to exceed March 31, 2021, to allow for the implementation of DCF Phase 2, and to allow for the continued coordination and implementation of preventative measures to ensure the safety of the individuals in a civil or forensic facility.

iv. Sections 916.13(2) and 916.15(3), Florida Statutes, requiring the Department to retain and retrain defendants adjudicated incompetent to proceed and retain and treat defendants found not guilty by reason of insanity, and not yet in a State Mental Health Treatment Facility, will remain suspended, as determined by the Department, to account for the additional time required to implement this phased admission plan to a date not to exceed March 31, 2021. During the suspension, the Department may, at its discretion, provide alternative treatment options to these defendants in the jails and communities, to include video communication methods.

v. Subsections 985.19(4)(a) and (b), Florida Statutes, requiring the Department to provide treatment or training to a juvenile adjudicated incompetent to proceed, who is not yet in our secure facility or program, will remain suspended for the purpose of implementing a phased admission plan to a date not to exceed

March 31, 2021. During the suspension, the Department may accept juvenile admissions and/or, at its discretion, provide alternative treatment options in the detention centers or jails where these juveniles are located, to include video communication methods. Juvenile admissions will be dependent upon the availability of transport as described in subsection 985.19(c), Florida Statutes, along with all other requirements being met, with no other factors occurring which would prevent youth from being served safely within the facility.

vi. Subsection 394.467(7), Florida Statutes, which states that a petition for continued involuntary placement of an individual may be filed by an administrator when a patient continues to meet criteria and is being treated at a treatment facility, is suspended, in part, to allow designated receiving facilities to file petitions under this subsection when a patient continues to meet involuntary commitment criteria but has not yet been placed at a treatment facility to begin treatment.

B. COVID-19 Testing

i. The Department, or its contracted Providers, will continue to provide admission dates to individuals, and will request COVID-19 test results be provided within seven (7) days of their scheduled admission date. Admission dates will be issued based on the order in which their completed commitment or admission packet was received. The Department, at its discretion, may triage and schedule admissions based upon additional factors as the Department deems necessary. This triage process may be performed in conjunction and consultation with managing entities and community partners. The Department may delay the admission for any

individual whose COVID-19 test results were not received or whose results were positive.

ii. The Department may perform additional COVID-19 testing to admitted individuals, as necessary.

C. Quarantine and Isolation

i. The Department will quarantine each individual admitted to a State Mental Health Treatment Facility for a minimum period of fourteen (14) days to allow for the necessary incubation period associated with COVID-19, and maintain the health, safety, and well-being of the individuals being served, the employees, and the community at-large.

D. Community Diversion

i. Where appropriate, the Department will work collaboratively with the managing entities and network service providers to increase efforts to divert appropriate individuals awaiting admission to a State Mental Health Treatment Facility.

E. Discharges and Transfers

i. The Department may delay the date an individual is to be discharged or transferred from a State Mental Health Treatment Facility when that individual is COVID-19 positive or placed in a quarantine status due to COVID-19 exposure.

2. Subsection 397.403(1)(f), Florida Statutes, which indicates proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinance is a minimum application requirement and indicates service Providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local

zoning requirements, is suspended, in part, for the specific purpose of allowing renewal licenses to be issued to Provider applicants unable to submit updated proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances as a result of COVID-19 related delays. Renewal licenses may be issued under this section upon the Department's receipt of documentation which demonstrates noncompliance is due to counties, cities, or towns not completing inspections or processing zoning requests as a result of COVID-19. Renewal licenses issued without proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances will be issued an interim license. Providers granted this interim license must submit proof of satisfactory fire, safety, and health inspections within 120 days of resumption of such inspections.

3. Subsection 397.403, Florida Statutes, which indicates an application for renewal must include proof of application for accreditation for the first renewal, and proof of accreditation for any subsequent renewals, is suspended, in part, to allow Providers to submit proof of application for accreditation in subsequent renewal periods when the applicant demonstrates that obtaining accreditation was hindered due to COVID-19 related delays or closures.

4. The Assistant Secretary of Substance Abuse and Mental Health, or his designee, may use discretion in the enforcement of any standard established by rule which (a) requires proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances, (b) requires inspections to be conducted onsite, (c) prevents telehealth delivery methods, (d) requires minimum staffing standards, (e) requires the determination of accreditation, or (f) establishes required timeframes, when it is determined that strict compliance with such standard creates a risk to health or safety or when a non-compliance is determined to be a direct result of COVID-19 complications. Sections of rules that may have increased enforcement discretion

pursuant to this section include Rules 65D30-0036, 65D30-0037, 65D-30.004, 65D-30.0044, 65D-30.005 - 30.010, 65D-30.014, 65D-30.0142, , 65E-9.007, 65E-12.105, 65E-14.021, 65E-20.004, 65E-20.011, 65E-20.012, 65E-20.014, and 65E-20.113, Florida Administrative Code. Enforcement discretion established pursuant to this section shall strictly apply to rule language which (a) requires proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances, (b) requires inspections to be conducted onsite, (c) prevents telehealth delivery methods, (d) requires minimum staffing standards, (e) requires the determination of accreditation, or (f) establishes required timeframes. Determinations under this section are made at the sole discretion of the Assistant Secretary of Substance Abuse and Mental Health, or his designee.

5. Section 409.1454, Florida Statutes, remains suspended for the purposes of ensuring that a child otherwise qualified for payment of the costs of driver education, licensure and costs incidental to licensure, who was unable to access in-person training or testing as a result of the closure of Florida Highway Safety and Motor Vehicles offices during this public health emergency, will qualify for payment of the costs of driver education, and licensure and costs incidental to licensure, which occurred from the date their six-month eligibility window closed, due to COVID-19, and through the expiration of this Order, to a date not to exceed March 31, 2021.

6. Once this Emergency Order expires, Providers shall have 30 days to come into compliance with all statutory and regulatory standards suspended by this Order.

7. This Emergency Order supersedes Emergency Orders DCF-20-144EO, DCF-20-149-EO, and DCF-20-170-EO.

8. This Emergency Order shall expire on March 31, 2021.

Because subsection 252.36(5)(a), Florida Statutes, allows the Governor to suspend the provisions of “any regulatory statute prescribing the procedures for [the] conduct of state business,” and because Section 4. B. of Executive Order No. 20-52 provides the Secretary of the Department of Children and Families with the authority to issue this Emergency Order, the requirements of sections 252.46 and 120.54(4), Florida Statutes, do not apply to this Order.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 30 day of September, 2020.



Chad Poppell, Secretary