2024 Legislative Updates

Florida's Baker and Marchman Acts

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September 30, 2024

FADAA

Sponsored by FADAA, a subsidiary of the Florida Behavioral Health Association, and the State of Florida, Department of Children and Families.

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DISCUSSION TOPICS

1. Changes to the Acts
2. Impact on Practice
3. Alignment between the two Acts

House Bill 7021: Mental Health and Substance Abuse

In 2024, the Florida Legislature passed House Bill 7021, modifying the Baker and Marchman Acts. The legislation went into effect July 1, 2024.
Goals of the legislation are to:

1. Increase access to services
2. Align judicial processes for more consistency
3. Improve discharge planning after a crisis
4. Increase involuntary service capacity

Senate Bill 7016: Health Care

In 2024, the Florida Legislature passed Senate Bill 7016, enhancing health care across the state. The legislation went into effect March 21, 2024.
In terms of behavioral health, the bill aims to:

1. Address workforce challenges
2. Increase the scope of Mobile Response Teams

LEGISLATIVE CHANGES

BAKER ACT

Baker Act

1. Chapter 394, Part 1, of the Florida Statutes is best known as “The Baker Act” or “The Florida Mental Health Act”.
2. The Baker Act was passed into law in 1971 to:
    a. Protect the rights of persons examined and treated for mental illnesses
    b. Provide for stabilization of an immediate crisis and maintain the safety of the individual and the public
    c. Encourage voluntary treatment

Baker Act

3. Provide procedures for:
    a. Involuntary and voluntary examinations and treatment in designated receiving facilities and state mental health treatment facilities
    b. Court processes and court orders
    c. Required notifications

Law Enforcement

1. Changed the statute to state that law enforcement officers **may** initiate an involuntary examination instead of “shall” for individuals who appear to meet the criteria, giving LEOs more discretion.
2. When transporting a minor, if the parent/legal guardian is present, a law enforcement officer must give the parent / legal guardian the name, address, and contact information for the facility they are taking the minor to before departing.
    - *This is subject to any safety and welfare concerns.*

Workforce – Psychiatric Nurses

1. The years of required clinical experience under the supervision of a physician is reduced from 2 years to 1 year.
2. Psychiatric Nurses are allowed to perform additional duties in designated receiving facilities within established protocols with a psychiatrist:
    a. Determine competency to give express and informed consent
    b. Order admissions
    c. Order emergency treatment (i.e., ETOs)

Workforce – Psychiatric Nurses

d. Speak with Guardian Advocates (GAs) prior to GAs being able to give consent

e. Order observation and medications on a Children's CSU

f. Provide second opinions for involuntary inpatient and outpatient services

g. Restrict a person's served right to access their medical record if the psychiatric nurse determines that access to the medical record is harmful to the person served

Workforce – Psychologists

1. The requirement for a Clinical Psychologist to have 3 years of postdoctoral experience is removed from the definition.
2. **However**, when practicing in a designated receiving facility, a clinical psychologist still requires 3 years postdoctoral experience to perform the following functions:
    a. Receive a request for discharge of a voluntary patient
    b. Approve a discharge
    c. Provide a second opinion for involuntary inpatient or outpatient services (unless the petitioner certifies allowable professionals are not available)
    d. Determine noncompliance with involuntary outpatient services

Patient Rights

Individuals served in designated treatment facilities or state mental health treatment facilities (voluntarily or involuntarily) continue to have the right to communicate with outside persons and receive visitors, but that right may be restricted.

1. A notice of any restriction (communication, mail, visitors) must **immediately** be served on the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative (there was no time requirement previously).
2. The Department of Children and Families (DCF) is interpreting "immediately" as 3 hours.

Involuntary Examination

1. The Baker Act involuntary examination criteria was amended to state that family members or friends who may help an individual avoid harm, must be **able and responsible** in addition to willing.
2. If a receiving facility does not admit a person that has been arrested for a **felony** who requires an involuntary examination, the receiving facility may complete the required examination and treatment for that individual via **telehealth**.
3. Explicitly allows Emergency Treatment Orders (ETOs) via verbal orders.
4. Clarifies that the 72-hour examination period begins when the individual arrives at a receiving facility.

Involuntary Examination

5. Adds requirements for the involuntary examination at a facility to include:
    a. Individual's treatment history at the facility
    b. Information regarding the individual's condition/behaviors from other knowledgeable adults
6. Adds examples of what constitutes criteria for neglect or refusal to care for self:
    a. Repeated admissions despite appropriate discharge plans (three or more admissions into the facility within the immediately preceding 12 months)
    b. Consideration of whether the individual would be able to meet their basic needs without the assistance of staff in the facility. If basic needs can not be met outside the facility, the individual continues to meet criteria.

Involuntary Services

1. HB 7021 combines the processes for involuntary inpatient placement and involuntary outpatient services.
2. Most of the involuntary outpatient services section is stricken and incorporated into the involuntary inpatient placement section.
3. What remains is that involuntary outpatient placement means the same thing as involuntary outpatient services and definitions.

Involuntary Outpatient Criteria

For involuntary outpatient services, part of the criteria are removed including:

1. Individuals no longer have to be at least 18 years of age.
2. Individuals no longer require a history of involuntary inpatient placement or incarceration.
3. Individuals no longer require history of completed or attempted violent behavior toward self or others.

Involuntary Inpatient Criteria

For involuntary inpatient placement, certain criteria are amended as follows:

1. He or she is incapable of surviving alone or with the help of willing, **able**, and responsible family or friends….
2. **Without treatment** there is a substantial likelihood that the person will inflict bodily harm on self or others as evidenced by recent behavior causing, attempting to cause, or threatening to cause such harm.
3. All available less restrictive treatment alternatives that would offer an opportunity for improvement of the person's condition have been deemed to be inappropriate **or unavailable**.

Content of Petitions for Involuntary Services

1. Petitions must include:
    a. Type of involuntary services being recommended (inpatient, outpatient, or both)
    b. Length of time recommended for each type of service
    c. Reason for the recommendation
    d. For involuntary outpatient services, the name of the service provider that has agreed to provide the services
    e. For involuntary outpatient services, a service plan completed in consultation with the patient and/or their guardian
2. Electronic signatures on petitions and other documents sent to the clerk of courts are acceptable.

Filing Petitions for Involuntary Services

1. Service providers treating an individual in the community may now file a petition for involuntary outpatient services.
2. For involuntary outpatient services, the petition to continue outpatient treatment may be filed any time before the expiration of the treatment order (used to be 10 days prior to expiration of the treatment order).
3. On inpatient units, if the 72-hour examination ends on a weekend or holiday, the petition for inpatient placement must be filed **by ordinary close of business** on the next working day.
4. Petitions for involuntary services that are filed late **will be dismissed.**

Pending Petitions for Involuntary Services

If after filing of an involuntary services petition the patient is stabilized and no longer meets criteria for involuntary examination, they must be released.

1. If involuntary inpatient placement was recommended, the petition must be withdrawn.
2. If involuntary outpatient services were recommended, the hearing will still commence.

Services Plan

1. The service plan must be deemed clinically appropriate by a licensed clinician who works for the service provider that has agreed to provide the services.
2. The recommended service plan must minimally include:
    a. Diagnosis (including any co-occurring substance use disorders)
    b. Recommended level of care
    c. Medications
    d. Discharge criteria

2nd Opinion for Involuntary Services

1. For inpatient settings, the examination by the second provider must be completed within the preceding 72 hours.
2. For outpatient settings, the examination by the second provider must be completed within the preceding 30 days.

Court Proceedings

1. Clerk of Courts must provide filed petitions and service plans to the respective managing entity.
    a. A managing entity is a nonprofit organization under contract with DCF to manage a network of behavioral health care providers for a specific region of the state.
    b. Managing entities do not provide direct services, they create provider networks for DCF's six regions.
2. Continuances may be granted for 7 calendar days initially (previously 4 weeks). With additional requests and showing of good cause and due diligence, that continuance may be granted for up to 21 days.

Court Proceedings

3. Medical records must be made available to the state attorney (may not use the medical records for criminal investigation or prosecution purposes).
4. The state attorney may request a continuance of up to 7 days.
5. Petitioned individuals may waive their right to be present at the hearing.
6. Hearings on involuntary outpatient services are held in the county where the petition is filed.
7. Hearings on involuntary inpatient placement are held in the county where the patient is located.

Court Proceedings

8. The State attorney and witnesses may attend hearings remotely, but they must provide all relevant documents by COB the day before the hearing.
9. Court must allow testimony from knowing adults regarding the patient's history and their current condition.
10. State can introduce Transfer Evaluations for state hospital recommendations at any time when presenting evidence, but court cannot consider content unless the person who completed the transfer evaluation testifies.

Court Orders

1. If the court deems that involuntary criteria are met, the court may order the patient for involuntary inpatient placement, involuntary outpatient services, or a combination of both based on recommendations in the petition.
2. Duration of the court order (outpatient, inpatient, or both) is for **up to** 6 months.

Discharge Planning

1. High utilizers of crisis services must be referred to care coordination. High utilization is defined as:
    a. Three or more acute care admissions or evaluations within 180 days, OR
    b. Acute care admissions that last 16 days or longer
    - *Acute care programs include designated receiving facilities, Statewide Inpatient Psychiatric Program, and inpatient detoxification programs.*
2. If Care Coordination is not available, the receiving facility should contact the managing entity, Medicaid HMO, private insurance provider, or DCF for assistance.
3. A personalized crisis prevention plan must be included in discharge paperwork.

Discharge Planning

3. Inpatient staff must make attempts to engage guardians and significant others in discharge planning.
4. Discharge instructions must be reviewed with the guardian and/or significant others, including prescribed medications, follow-up appointments, and recommended resources.
5. Interim services must be initiated if the recommended level of care is not available at time of discharge.
    - *If interim services are not available, the receiving facility should contact the managing entity, Medicaid HMO, private insurance provider, or DCF for assistance.*

High Utilization of Crisis Services

Providers must develop and implement policies and procedures for addressing the needs of high utilizers, including:

1. Review of effectiveness of previous discharge plans
2. How the new discharge plan will address the problems experienced with implementation of previous discharge plans
3. Strategies to reduce need for future crisis stabilization services

Noncompliance

1. Noncompliance with involuntary outpatient services must be reported to the court.
2. Noncompliance may be determined by a psychiatrist, a clinical psychologist (with at least 3 years of clinical experience), or a psychiatric nurse.
3. A person may not be incarcerated for noncompliance with their court-ordered services.

Other Baker Act Changes

1. The requirement for a hearing for voluntary admissions of minors is removed throughout the law.
2. The limitation of 30 beds for crisis stabilization units is removed.

LEGISLATIVE CHANGES

MARCHMAN ACT

Marchman Act

1. Chapter 397 of the Florida Statutes is best known as “The Marchman Act” or the “Hal S. Marchman Alcohol and Other Drug Services Act.”
2. The Marchman Act was passed into law in 1993 to:
    a. Provide for voluntary and involuntary services for individuals who are impaired due to substance use.
    b. Develop a full continuum of licensed substance use prevention, intervention, and treatment services.
    c. Emphasize access to the least restrictive and optimal level of care, appropriate to the individual in need.
    d. Protect the rights of persons served, especially for involuntary admissions.

Involuntary Admissions

1. Marchman Act involuntary admission criteria are amended to state that family members or friends who may help an individual avoid harm, must be **able** and **responsible** in addition to willing.
2. Involuntary admission of the person must be to the service component that represents **the most appropriate** in addition to least restrictive.

Combination of Marchman Act Processes

1. HB 7021 combines the historical 2-step Marchman process, which included a petition for assessment and stabilization followed by a petition for treatment (if indicated), into one judicial process for involuntary treatment services.
2. All references to involuntary assessment and stabilization petitions are removed and replaced with involuntary treatment petitions.
3. Five sections of the Marchman Act that addressed involuntary assessment and stabilization as a separate process are repealed.

Combination of Marchman Act Processes

4. In emergency situations the petition for involuntary treatment can still request an ex parte order for assessment and stabilization.
5. The court may still issue an ex parte order for assessment and stabilization solely based on the content of the petition.
    - *Examples of an emergency may include recent overdoses, found unconscious with needle in arm, selling sexual favors for drugs, etc.*

Involuntary Treatment Petition

A person may be the subject of a petition for court-ordered involuntary treatment if that person:

1. **Reasonably appears** to meet the criteria for involuntary admission;
2. Has been placed under protective custody by law enforcement within the previous 10 days;
3. Has been subject to an emergency admission through a professional certificate within the previous 10 days; **or**
4. Has been assessed by a qualified professional within 30 days.

Court Proceedings

1. A hearing is scheduled within 10 court working days of receiving a petition.
2. The petitioned individual must be present at the hearing unless the court finds:
    a. The individual knowingly, intelligently, and voluntarily waives his or her right to be present or,
    b. Upon receiving proof of service and evaluating the circumstances of the case, that his or her presence is inconsistent with his or her best interests or is likely to be injurious to self or others.
3. The petitioned individual may waive his/her right to an attorney.
4. The court must hear testimony from individuals, such as but not limited to family members, familiar with the individual's substance use.

Court Proceedings

5. Qualified professionals who executed an involuntary services certificate are no longer obligated to be a witness at the hearing.
6. Witnesses may attend hearings remotely, but they must provide all relevant documents by COB the day before the hearing.
7. Clerk of Courts must provide court orders for involuntary treatment services to DCF and the Florida Mental Health Institute (FMHI) in addition to the managing entities.

Court Orders

1. If the individual has not been assessed prior to the petition or through an ex parte order, the court must order an assessment.
2. Once assessment recommendations are completed, individuals recommended for treatment may be ordered for involuntary treatment services for **up to** 90 days.
3. The courts now have explicit authority to order drug tests.

Involuntary Assessment

1. A service provider may hold an individual for assessment up to 72 hours.
    a. However, the person may be retained longer if the individual is in active withdrawal or is treated for other medical conditions until the medical conditions are resolved, but no longer than next scheduled court date.
    b. The provider may also seek additional time from the court, if necessary.
    c. If the 72-hour or extended observation period ends on a weekend or holiday, the individual may be held until the next court working day.
2. The requirement that an assessment completed by a qualified professional be reviewed by a physician is removed.

Involuntary Assessment

3. Assessments for minors must be initiated within the first 12 hours of admission, aligning with the Baker Act.
4. Assessment recommendations must be provided to the court before the close of business the day before the hearing.
5. The assessment recommendations must contain:
    a. A recommendation on the level of substance use treatment, if any;
    b. The relevant information on which the findings are based; and
    c. Any co-occurring mental health or other treatment needs.

Extension of Treatment

1. A petition for renewal of the involuntary treatment services order must be filed if the individual continues to meet criteria for involuntary services.
2. The petition for renewal of the order must be filed with the court before the expiration of the court-ordered services period.
3. The petition may be filed by the provider or by the person who filed the petition for the initial treatment order.

Court Jurisdiction

1. The court maintains jurisdiction from assessment through treatment.
2. Specific jurisdiction of the court for individuals under an involuntary treatment order has been added, including:
    a. Monitoring compliance
    b. Changing treatment modality
    c. Initiating contempt of court proceedings
    d. Setting hearings
3. If during a Marchman hearing the court determines the respondent meets **any** of the Baker Act criteria (not just being likely to injure self or others) the court may order the respondent for an involuntary examination under the Baker Act.

Involuntary Outpatient Services

1. Criteria that must be met before an individual may be ordered to involuntary outpatient (OP) services are added, including:
    a. An assessment by a qualified professional recommending OP treatment.
    b. Services must be available in the county the respondent is located.
    c. The respondent is likely to follow an outpatient care plan.
2. The order must include the individual's need for treatment and the appropriateness of less restrictive service options.

Involuntary Outpatient Services

3. Individuals ordered for involuntary OP must be supported by someone in the community who must report any non-compliance to the court. Such individual may be:
    a. A social worker
    b. A case manager of a licensed service provider
    c. A willing, able, and responsible individual appointed by the court

Guardian Advocate

The section of the Marchman Act on petitioning the court for a guardian advocate for individuals deemed incompetent to consent to treatment is repealed.

Discharge Planning

New discharge planning requirements include addressing the patient's needs for:

1. Follow-up behavioral health appointments
2. Information on how to obtain prescribed medications
3. Information pertaining to available living arrangements and transportation
4. Referral to recovery support opportunities, including, but not limited to, connection to a peer specialist

Other Marchman Act Changes

1. Having a substance use disorder and use of illicit or prescription drugs is added to the definition of “impaired” or “substance abuse impaired”.
2. Providers operating Addiction Receiving Facilities or detoxification units may exceed their licensed capacity by 10% for no longer than 3 consecutive days and no more than 7 days per month (this aligns with the Baker Act and a CSU’s ability to exceed licensed capacity).

ADDITIONAL LEGISLATIVE CHANGES AND MODIFICATIONS

Background Screening

1. Reduces Background Screening Requirements.
2. Physicians and nurses holding an active, unencumbered Florida license are no longer subject to background screening requirements.
    - *In Florida, these professionals are screened as part of their initial and ongoing licensure process.*

HR ↑

Ombudsman for Children

An Office of Children's Behavioral Health Ombudsman is established within DCF. Duties include:

1. Be a central point to receive complaints regarding state-funded services for children and direct them to the responsible entities.
2. Provide education to families on the behavioral health system of care.
3. Analyze complaints and make recommendations to address systemic issues.
4. Engage in functions that may improve services for children.

Transparency

1. DCF and the Agency for Health Care Administration (AHCA) must provide data to FMHI related to involuntary examinations.
2. FMHI must:
    a. Analyze service data for high utilizers of crisis services
    b. Identify any patterns or trends
    c. Make recommendations to decrease avoidable admission

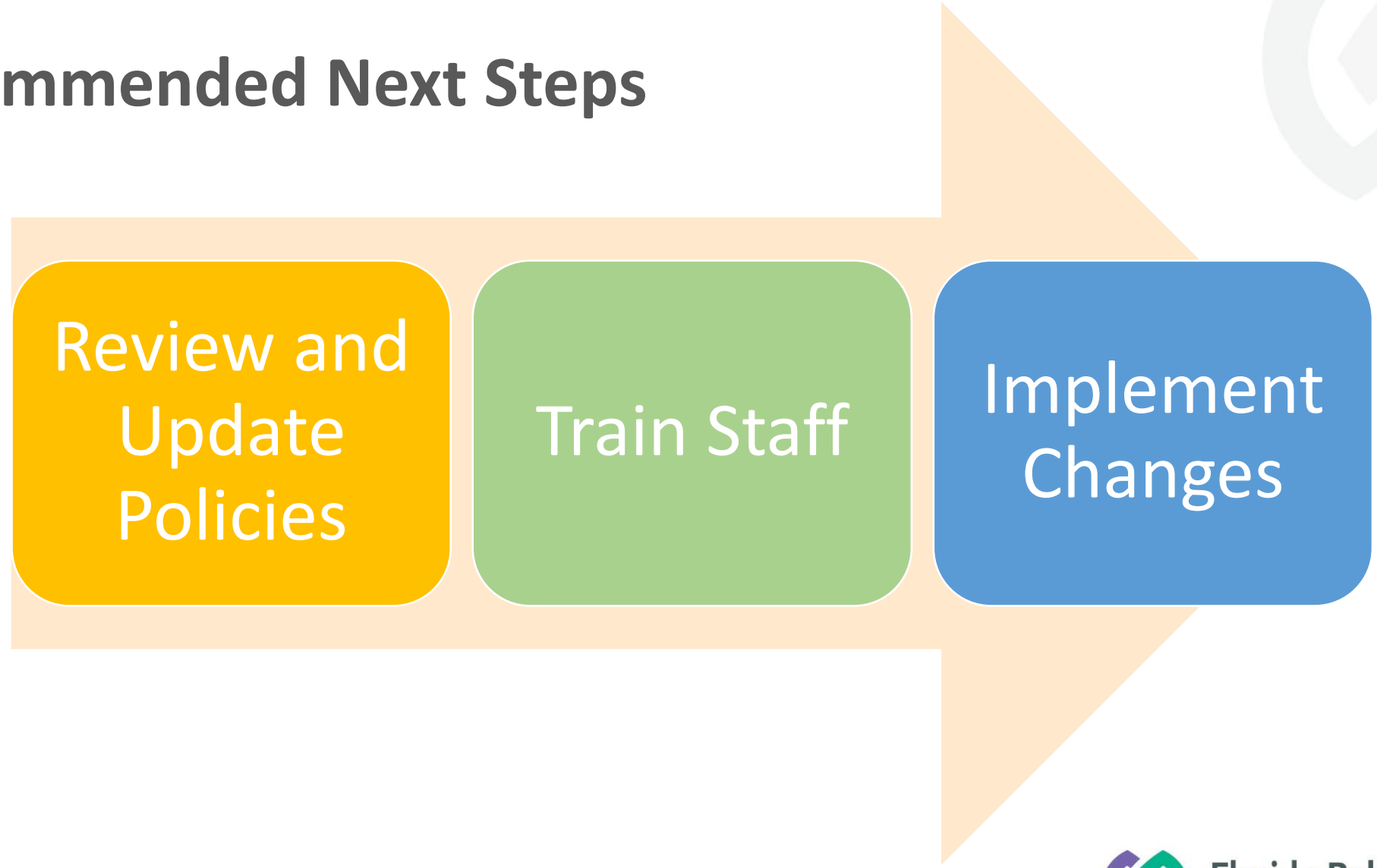
Behavioral Health Interagency Collaboration

1. DCF and AHCA must establish Behavioral Health Interagency Collaboratives throughout the state.
2. Goals are to:
    a. Identify ongoing challenges at the local level
    b. Facilitate enhanced interagency communication and collaboration
    c. Develop strategies to address changes and improve access, availability, and quality of behavioral health services
3. Members include, but are not limited to:
    a. State agencies (i.e., APD, DOE, DOH, etc.)
    b. Funders (i.e., MEs, CBCs, MMA plans, etc.)
    c. Law enforcement
    d. School districts
    e. Service providers

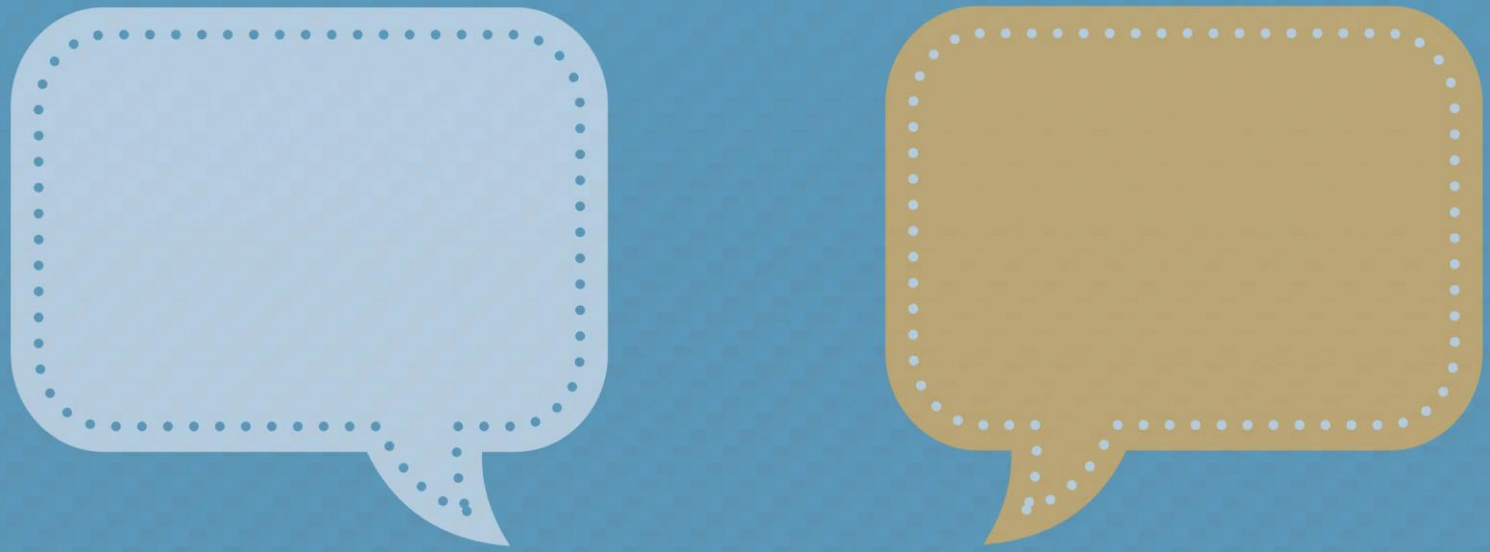
Funding

1. House Bill 7021 includes a recurring allocation of $50 million to enhance discharge planning and increase capacity of acute care settings.
2. Senate Bill 7016 includes a recurring allocation of $11.5 million to enhance crisis diversion through mobile response teams.

Recommended Next Steps



Discussion



Any Questions?