

# Florida's Mental Health Act

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At the completion of this course, the learner will be able to:

1. Define mental illness according to Florida's Mental Health Act
2. Identify the criteria for involuntary examination as defined in the Baker Act
3. Discuss how an involuntary examination can be initiated as defined in the Baker Act
4. Identify the criteria for a person to be voluntarily placed as defined in the Baker Act

## Mental Illness

Mental illness, which has been recognized for thousands of years, is a term referring to different types of mental disorders such as disorders of thought, mood or behavior.<sup>1</sup> In addition, to be classified as such, the condition must cause distress and result in a reduced ability to function psychologically, socially, occupationally, or interpersonally.<sup>2</sup> The American Psychological Association reports that in any given year as many as 20% of Americans suffer from a diagnosable mental illness.<sup>3</sup> Studies show, though, that a person is more likely to recover from a mental disorder if they are treated with respect and fairness. In addition, recovery cannot be determined if a person's human rights are ignored or neglected.<sup>4</sup>

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<sup>1</sup> Hall-Flavin, D. (2006). Defining mental illness: An interview with a Mayo Clinic specialist. <http://www.mayoclinic.com/health/mental-illness/HQ01079>

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<sup>3</sup> Let's Talk Facts About – What is Mental Illness? (2005). American Psychological Association. <http://www.healthyminds.org/multimedia/whatismentalillness.pdf>

<sup>4</sup> Bassman, R. (2004). Mental Health in the United States. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Service Administration. Chapter 4, The Evolution from Advocacy to Self-Determination. <http://mentalhealth.samhsa.gov/publications/allpubs/sma06-4195/chapter04.asp>

According to the Florida Mental Health Act (Chapter 394, Florida Statutes), or Baker Act, as it is commonly referred to, mental illness is defined as “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 a person’s ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.”<sup>5</sup>

### **Brief History of the Baker Act**

The Baker Act went into effect in 1972 after being passed into law in by the Florida legislature in 1971, and was at the time considered landmark legislation with regard to protecting the rights of the mentally ill. The Baker Act is named after a former Miami State Representative, Maxine Baker who, after serving as chairperson of the House Committee on Mental Health, sponsored the Act. The intent of the Act is to promote voluntary admission (as opposed to involuntary), and assist the person to return to a normal life in the community, while employing the least restrictive means of intervention.

The Department of Children and Family Services (DCF) is Florida’s “authority” over the Baker Act. DCF and the Agency for Health Care Administration (AHCA) have executive and administrative supervision over all mental health facilities, programs, and services.

Florida has had statutes governing mental illness since 1874. Before the Act was passed, persons as young as 12 years could be placed into state hospitals, and all that was needed were signed affidavits from three people and the approval of a county judge. The Baker

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<sup>5</sup> Florida Department of Children and Families - [Florida Mental Health Act, F.S. 394, Part I](http://www.dcf.state.fl.us/mentalhealth/laws/chapter394.pdf)  
<http://www.dcf.state.fl.us/mentalhealth/laws/chapter394.pdf>

Act assures that a person will not be retained or admitted to state institutions without just cause, and it also established a patients' bill of rights. Since 1982, several legislative amendments have been enacted to protect the rights of the mentally ill.

Mental health is a major concern in Florida because it involves many intricacies of the law and civil rights for an individual that, prior to the Baker Act, were overlooked.

### **Emergency Treatment**

If a person has been treated at a hospital for an emergency medical condition and has been Baker Acted, he or she must be evaluated for involuntary inpatient placement *and* involuntary outpatient placement before being released from the hospital, and the physician must perform the initial mandatory involuntary examination. This includes:

- Reviewing observations of recent behavior
- Reviewing transportation to the receiving facility *and*
- Must have a court order, report from a law enforcement officer, or mental health professional's certificate
- Brief psychiatric history *and*
- Face-to-face examination in a timely manner to determine if he/she meets criteria for release.

In order for an individual to meet the requirements of the Baker Act, there should be evidence that a person poses a threat to himself or others. According to Florida Statute Chapter 394.463, *Criteria for Involuntary Examination*, a person may be taken to a Baker Act receiving facility for involuntary examination if there is reason to believe that he or

she has a mental illness, as defined in the Baker Act, and because of his or her mental illness:

- The person has refused voluntary examination or is unable to determine for himself or herself whether examination is necessary; and
- Without care or treatment, the person is likely to suffer from neglect resulting in real and present threat of substantial harm that can't be avoided through the help of others; or
- There is substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

The involuntary examination can be initiated by:

- A court may enter an ex parte order, based upon sworn testimony, which directs a law enforcement officer to take the person to the nearest receiving facility (an ex parte order is a decision made by a judge without requiring all parties to be present).
- A law enforcement officer can take a person into custody who appears to meet the criteria for involuntary examination, and then deliver that person to the nearest receiving facility.
- One of the following: a physician, licensed clinical psychologist, licensed mental health counselor, psychiatric nurse, or clinical social worker, can execute a certificate stating that he or she examined the person within the preceding 48

hours and finds that the person appears to meet the involuntary examination criteria, and must state his or her observations for the basis of that conclusion.<sup>6</sup>

A person must be discharged from the receiving facility if, after being examined, he or she does not meet criteria for involuntary outpatient placement or involuntary inpatient treatment. If the person does meet the criteria for involuntary inpatient placement, a petition can be filed with the court, which holds a hearing. The court can order inpatient placement for up to six months if it determines the person meets criteria for involuntary inpatient placement.

After the examination, or a period of inpatient placement, a person can be determined to need involuntary treatment in the community. In this instance, a petition can be filed for involuntary outpatient placement. The court will hold a hearing, and if it determines the person meets the nine-part criteria for involuntary outpatient placement, it can be ordered for up to six months. As a result of the Baker Act reform in 2005, this less restrictive alternative to involuntary inpatient placement became available.

## **IOP**

Involuntary Outpatient Placement (IOP) is a court order which mandates that a treatment plan be followed on an outpatient basis. It also is only applied to patients with a history of

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<sup>6</sup> Baker Act Handbook and User Reference Guide - Involuntary Examinations -2006 State of Florida Department of Children & Families. <http://www.dcf.state.fl.us/mentalhealth/laws/baappf.pdf>

noncompliance with treatment, and is combined with either a history of serious violence or repeated Baker Act admissions.

The nine criteria that must be met are:

a) The person is 18 years of age or older

(b) The person has a mental illness

(c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination

(d) The person has a history of lack of compliance with treatment for mental illness;

(e) The person has:

1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving facility or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or

2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months

(f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of

the purpose of placement for treatment or he or she is unable to determine for himself or herself whether placement is necessary

(g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient placement in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1)

(h) It is likely that the person will benefit from involuntary outpatient placement; and

(i) All available less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.<sup>7</sup>

### **Voluntary Admission**

Voluntary admission is encouraged by the Baker Act for psychiatric treatment. However, a person must be able to understand any decisions made and their consequences, as well as be able to exercise their own rights. For a person to be voluntarily placed, he or she must:

- Have a mental illness
- Be suitable for treatment

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<sup>7</sup> Treatment Advocacy Center. Briefing Paper: FAQs About Baker Act Reform (6/14/2005). <http://www.psychlaws.org/PressRoom/faqonbakeract.htm>

- Be competent to provide express and informed consent (able to make well reasoned, willful and knowing decisions about his or her medical or mental health treatment).
- Be 18 years of age or older (persons 17 years of age and under can have application made by a guardian; and can be admitted only after a hearing that verifies the consent is voluntary).

The admitting physician must document in the clinical record that the person is able to give express and informed consent for admission and treatment, within 24 hours after a voluntary admission. If the person cannot do so, he or she must be discharged or be transferred to involuntary status.

A facility must discharge a person on voluntary status if:

- The person has sufficiently improved and staying in the facility is no longer desirable.
  - The person requests the discharge orally or in writing. The person must be discharged within 24 hours of the request, unless the request is rescinded or the person is transferred to involuntary status.
  - The person on voluntary status who is admitted to a facility and refuses to consent to or revokes consent to treatment must be discharged within 24 hours after refusal or revocation, unless transferred to involuntary status or the refusal or revocation is voluntarily rescinded by the person.<sup>8</sup>
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## **Patients' Rights**

The Baker Act provides for the rights of persons, whether voluntary or involuntary, inpatient or outpatient, if the services are governed by the Act. A person who enters a receiving facility and/or receives treatment has the right to:

- Individual dignity
- Treatment
- Express and Informed Consent
- Quality of Treatment
- Communication, Abuse Reporting, Visits
- Care and Custody of Personal Effects
- Voting in Public Elections
- Habeas Corpus
- Treatment and Discharge Planning
- A Representative
- Confidentiality
- Damages as determined by law for violation of rights

If a physician has declared the person to be incapacitated or incompetent (physically or mentally unable to communicate a willful and knowing health care decision<sup>9</sup>), and the person has already designated a health care surrogate, the surrogate can provide consent.

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<sup>8</sup> Baker Act Handbook and User Reference Guide – Voluntary Admissions -2006 State of Florida Department of Children & Families. <http://www.dcf.state.fl.us/mentalhealth/laws/baappb.pdf>

<sup>9</sup> Baker Act Handbook and User Reference Guide – 2006 State of Florida Department of Children & Families. <http://www.dcf.state.fl.us/mentalhealth/laws/baappa.pdf>

The Baker Act mandates that a person must be treated on an involuntary basis if he/she has a healthcare surrogate or proxy. In addition, the surrogate must be notified in writing when his or her authority begins. The surrogate has the authority to:

- Make written consent to health care decisions the principal would have made if capable of making such decisions;
- Have access to clinical records;
- Authorize release of records for continuity of care;
- Authorize transfer of principal to or from a health care facility (other than to psychiatric hospital); and
- Apply for public benefits.

### **Baker Act Facilities**

There are over 115 institutions in Florida that are designated for the Baker Act. Baker Act receiving facilities may include general hospitals with psychiatric units, psychiatric hospitals, community health care centers with residential units, and stand alone units. A receiving facility is any public or private facility designated by DCF to receive and hold involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment. A treatment facility is state-owned, operated or supported, and designated by DCF for extended treatment and hospitalization, beyond that provided by a receiving facility.

There are two types of Baker Act receiving facilities – public and private. Most private facilities are attached to hospital public funding. Clients are usually working professionals or have disability benefits. Public facilities are funded by the state or county and are designed that way to take care of the indigent population. Forensic cases are also mandated by the Baker Act law and are to be handled by public receiving facilities if the patient is incarcerated or has a major offense. Voluntarily or involuntarily a person may be committed to one of these facilities, as long they are deemed a threat. A person can be involuntarily held for no more than 72 hours once he/she is “Baker Acted”.

This statute affects many aspects of law enforcement, the community, health care, and the person who is being “Baker Acted.” There are numerous rules and regulations that must be followed in order for the Baker Act to be successful and not violate the law or a person’s civil rights. It is important to know that a person brought in under this act has not broken the law; however it is for the person’s safety that they be brought in to a receiving facility and evaluated.

As stated above, involuntary incarceration cannot be made unless certain criteria are met. Although a person may not want to participate, it is in his or her best interest to complete the stay, especially if he or she is not capable of realizing the danger from being mentally ill.

## **Conclusion**

The Florida Mental Health Act, or the Baker Act, is used only in cases where a person has mental illness and meets all the criteria for voluntary or involuntary admissions. It protects the civil and due process rights of persons with a mental illness as defined by the Baker Act. The information above is an overview of the basics of the Baker Act and by no means includes all criteria and exclusions of the Act. There is paperwork, procedures, and reporting that are required by the Baker Act and are not covered in this work. For further information and in-depth insight into Florida's Mental Health Act, please refer to the Department of Children and Families website:

<http://www.dcf.state.fl.us/mentalhealth/laws/index.shtml>