

By Senator Sobel

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1 A bill to be entitled
2 An act relating to nursing home records; amending s.
3 400.145, F.S.; requiring a nursing home to provide a
4 copy of a resident's paper and electronic records upon
5 receipt of a written request that meets certain
6 federal requirements; specifying the contents of such
7 records; requiring a facility to furnish a resident's
8 records within a certain timeframe; authorizing
9 certain persons to make a request for a deceased
10 resident's records; requiring that a request for a
11 deceased resident's records be in writing and meet
12 certain federal requirements; specifying certain
13 documentation that must accompany a request for a
14 deceased resident's records; authorizing a facility to
15 refuse to furnish records under certain circumstances;
16 providing that a facility is not criminally or civilly
17 liable for furnishing a resident's records under
18 certain circumstances; amending s. 429.294, F.S.;
19 conforming provisions to changes made by the act;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 400.145, Florida Statutes, is amended to
25 read:

26 400.145 Records of care and treatment of resident; copies
27 to be furnished.—

28 (1) Upon receipt of a written request that complies with
29 the requirements of the federal Health Insurance Portability and

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30 Accountability Act of 1996 (HIPAA), 42 U.S.C. ss. 1320d-2 et
 31 seq., ~~a Unless expressly prohibited by a legally competent~~
 32 ~~resident,~~ any nursing home licensed pursuant to this part shall
 33 furnish to a legally competent resident of the nursing home, or
 34 to a representative of that resident authorized to make requests
 35 for the resident's records under HIPAA or this section, a copy
 36 of that resident's paper and electronic records that are in the
 37 possession of the facility. Such records must include medical
 38 and psychiatric records and any records concerning the care and
 39 treatment of the resident performed by the facility. The
 40 facility shall furnish such records: ~~the spouse, guardian,~~
 41 ~~surrogate, proxy, or attorney in fact, as provided in chapters~~
 42 ~~744 and 765, of a current resident~~

43 (a) For a current resident, within 14 ~~7~~ working days after
 44 receipt of the ~~a~~ written request;7 or

45 (b) For ~~of~~ a former resident, within 30 ~~10~~ working days
 46 after receipt of the ~~a~~ written request, ~~a copy of that~~
 47 ~~resident's records which are in the possession of the facility.~~
 48 ~~Such records shall include medical and psychiatric records and~~
 49 ~~any records concerning the care and treatment of the resident~~
 50 ~~performed by the facility, except progress notes and~~
 51 ~~consultation report sections of a psychiatric nature. Copies of~~
 52 ~~such records shall not be considered part of a deceased~~
 53 ~~resident's estate and may be made available prior to the~~
 54 ~~administration of an estate, upon request, to the spouse,~~
 55 ~~guardian, surrogate, proxy, or attorney in fact, as provided in~~
 56 ~~chapters 744 and 765.~~

57 (2) A request for a deceased resident's records may be made
 58 by:

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59 (a) A person duly appointed by a court of competent
60 jurisdiction to act as the personal representative, executor,
61 administrator, or temporary administrator of the deceased
62 resident's estate.

63 (b) A person designated by the resident to act as his or
64 her representative in a legally valid will if a judicial
65 appointment has not been made.

66 (c) One of the following if a judicial appointment has not
67 been made and a representative has not been named in a legally
68 valid will:

69 1. A surviving spouse of the deceased resident.

70 2. A surviving child of the deceased resident if there is
71 no surviving spouse.

72 3. A parent of the deceased resident if there is no
73 surviving spouse or child.

74 (3) A request for a deceased resident's records must be in
75 writing and must comply with the requirements of this section
76 and HIPAA. A person authorized to make a request under
77 subsection (2) must include one of the following in his or her
78 written request:

79 (a) A copy of the order appointing such person as the
80 representative of the deceased resident's estate.

81 (b) A copy of the will designating such person as the
82 deceased resident's representative.

83 (c) A letter from such person's attorney verifying his or
84 her relationship to the deceased resident and the absence of a
85 court-appointed representative and a legally valid will.

86 (4) A facility may charge a reasonable fee for the copying
87 of resident records. Such fee ~~may shall~~ not exceed \$1 per page

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88 for the first 25 pages and 25 cents per page for each page in
89 excess of 25 pages.

90 (5) The facility shall further allow a person authorized to
91 obtain a resident's records ~~any such spouse, guardian,~~
92 ~~surrogate, proxy, or attorney in fact, as provided in chapters~~
93 ~~744 and 765,~~ to examine the original records, or microfilms or
94 other suitable reproductions of such records, in the its
95 possession of the facility subject to, ~~or microfilms or other~~
96 ~~suitable reproductions of the records, upon such reasonable~~
97 ~~terms that as shall be imposed,~~ to help ensure assure that the
98 records are not damaged, destroyed, or altered.

99 (6) If a facility determines that disclosure of the
100 resident's records will be detrimental to his or her physical or
101 mental health, the facility may refuse to furnish the records.
102 Upon such refusal, and upon written request by the resident, the
103 resident's records shall be furnished to any other medical
104 provider designated by the resident.

105 (7) A requesting party will not be indemnified by a
106 facility that releases copies of records in good faith under
107 this section and the facility may not be found to have violated
108 any criminal or civil laws, and is not civilly liable to the
109 resident, the resident's estate, or any other person.

110 (8) ~~(2) A No person may not shall be allowed to~~ obtain
111 copies of a resident's ~~residents'~~ records pursuant to this
112 section more often than once per month, except that physicians'
113 ~~physician's~~ reports that are included in those ~~in the residents'~~
114 records may be obtained as often as necessary to effectively
115 monitor the resident's ~~residents'~~ condition.

116 Section 2. Subsection (1) of section 429.294, Florida

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117 Statutes, is amended to read:

118 429.294 Availability of facility records for investigation
119 of resident's rights violations and defenses; penalty.—

120 (1) Failure to provide complete copies of a resident's
121 records, including, but not limited to, all medical records and
122 the resident's chart, within the control or possession of the
123 facility ~~within 10 days~~, in accordance with ~~the provisions of s.~~
124 400.145, constitutes ~~shall constitute~~ evidence of failure of
125 that party to comply with good faith discovery requirements and
126 waives ~~shall waive~~ the good faith certificate and presuit notice
127 requirements under this part by the requesting party.

128 Section 3. This act shall take effect July 1, 2014.