

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Children, Families &
 2 Seniors Subcommittee
 3 Representative Adkins offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 394.4615, Florida Statutes, is amended
 8 to read:

9 394.4615 ~~Clinical records;~~ confidentiality.—

10 (1) CLINICAL RECORDS.—

11 (a) ~~(1)~~ A clinical record shall be maintained for each
 12 patient. The record shall include data pertaining to admission
 13 and such other information as may be required under rules of the
 14 department. A clinical record is confidential and exempt from
 15 the provisions of s. 119.07(1). Unless waived by express and
 16 informed consent, by the patient or the patient's guardian or
 17 guardian advocate or, if the patient is deceased, by the

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18 patient's personal representative or the family member who
19 stands next in line of intestate succession, the confidential
20 status of the clinical record shall not be lost by either
21 authorized or unauthorized disclosure to any person,
22 organization, or agency.

23 ~~(b)(2)~~ The clinical record shall be released when:

24 1.(a) The patient or the patient's guardian authorizes the
25 release. The guardian or guardian advocate shall be provided
26 access to the appropriate clinical records of the patient. The
27 patient or the patient's guardian or guardian advocate may
28 authorize the release of information and clinical records to
29 appropriate persons to ensure the continuity of the patient's
30 health care or mental health care.

31 2.(b) The patient is represented by counsel and the
32 records are needed by the patient's counsel for adequate
33 representation.

34 3.(e) The court orders such release. In determining
35 whether there is good cause for disclosure, the court shall
36 weigh the need for the information to be disclosed against the
37 possible harm of disclosure to the person to whom such
38 information pertains.

39 4.(d) The patient is committed to, or is to be returned
40 to, the Department of Corrections from the Department of
41 Children and Families, and the Department of Corrections
42 requests such records. These records shall be furnished without
43 charge to the Department of Corrections.

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44 ~~(c)(3)~~ Information from the clinical record may be
45 released in the following circumstances:

46 ~~1.(a)~~ When a patient has declared an intention to harm
47 other persons. When such declaration has been made, the
48 administrator may authorize the release of sufficient
49 information to provide adequate warning to the person threatened
50 with harm by the patient.

51 ~~2.(b)~~ When the administrator of the facility or secretary
52 of the department deems release to a qualified researcher as
53 defined in administrative rule, an aftercare treatment provider,
54 or an employee or agent of the department is necessary for
55 treatment of the patient, maintenance of adequate records,
56 compilation of treatment data, aftercare planning, or evaluation
57 of programs.

58
59 For the purpose of determining whether a person meets the
60 criteria for involuntary outpatient placement or for preparing
61 the proposed treatment plan pursuant to s. 394.4655, the
62 clinical record may be released to the state attorney, the
63 public defender or the patient's private legal counsel, the
64 court, and to the appropriate mental health professionals,
65 including the service provider identified in s.
66 394.4655(6)(b)2., in accordance with state and federal law.

67 ~~(d)(4)~~ Information from clinical records may be used for
68 statistical and research purposes if the information is

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69 abstracted in such a way as to protect the identity of
70 individuals.

71 ~~(e)(5)~~ Information from clinical records may be used by
72 the Agency for Health Care Administration, the department, and
73 the Florida advocacy councils for the purpose of monitoring
74 facility activity and complaints concerning facilities.

75 ~~(f)(6)~~ Clinical records relating to a Medicaid recipient
76 shall be furnished to the Medicaid Fraud Control Unit in the
77 Department of Legal Affairs, upon request.

78 ~~(7) Any person, agency, or entity receiving information~~
79 ~~pursuant to this section shall maintain such information as~~
80 ~~confidential and exempt from the provisions of s. 119.07(1).~~

81 ~~(g)(8)~~ Any facility or private mental health practitioner
82 who acts in good faith in releasing information pursuant to this
83 section is not subject to civil or criminal liability for such
84 release.

85 ~~(h)(9)~~ Nothing in this section is intended to prohibit the
86 parent or next of kin of a person who is held in or treated
87 under a mental health facility or program from requesting and
88 receiving information limited to a summary of that person's
89 treatment plan and current physical and mental condition.
90 Release of such information shall be in accordance with the code
91 of ethics of the profession involved.

92 ~~(i)(10)~~ Patients shall have reasonable access to their
93 clinical records, unless such access is determined by the
94 patient's physician to be harmful to the patient. If the

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95 patient's right to inspect his or her clinical record is
96 restricted by the facility, written notice of such restriction
97 shall be given to the patient and the patient's guardian,
98 guardian advocate, attorney, and representative. In addition,
99 the restriction shall be recorded in the clinical record,
100 together with the reasons for it. The restriction of a patient's
101 right to inspect his or her clinical record shall expire after 7
102 days but may be renewed, after review, for subsequent 7-day
103 periods.

104 ~~(j)~~ ~~(11)~~ Any person who fraudulently alters, defaces, or
105 falsifies the clinical record of any person receiving mental
106 health services in a facility subject to this part, or causes or
107 procures any of these offenses to be committed, commits a
108 misdemeanor of the second degree, punishable as provided in s.
109 775.082 or s. 775.083.

110 (2) COURT RECORDS.—

111 (a) All pleadings, documents, and the images of all
112 pleadings and documents filed with a court pursuant to Part I of
113 Chapter 394 are confidential and exempt from s. 119.07(1) and s.
114 24(a), Art. I of the State Constitution. Pleadings and documents
115 made confidential and exempt by this subsection may be disclosed
116 by the clerk of the court, upon request, to:

- 117 1. The petitioner.
- 118 2. The petitioner's attorney.
- 119 3. The respondent.
- 120 4. The respondent's attorney.

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- 121 5. The respondent's guardian or guardian advocate, if
122 applicable.
- 123 6. In the case of a minor respondent, the respondent's
124 parent, guardian, legal custodian, or guardian advocate.
- 125 7. The respondent's treating health care practitioner.
- 126 8. The respondent's health care surrogate or proxy.
- 127 9. The respondent's patient representative.
- 128 10. A person or entity authorized to view records upon a
129 court order for good cause. In determining whether there is good
130 cause for disclosure, the court shall weigh the need for the
131 information to be disclosed against the possible harm of
132 disclosure to the respondent.
- 133 (b) The clerk of the court may not post any personal
134 identifying information on the docket or in publicly accessible
135 files.
- 136 (c) The exemption under this subsection applies to all
137 documents filed with a court before, on, or after July 1, 2016.
- 138 (d) This subsection is subject to the Open Government
139 Sunset Review Act in accordance with s. 119.15 and shall stand
140 repealed on October 2, 2021, unless reviewed and saved from
141 repeal through reenactment by the Legislature.
- 142
- 143 Any person, agency, or entity receiving information pursuant to
144 this section shall maintain such information as confidential and
145 exempt from the provisions of s. 119.07(1).

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146 Section 2. The Legislature finds that it is a public
147 necessity to exempt from s. 119.07(1), Florida Statutes, and s.
148 24(a), Article I of the State Constitution, all pleadings and
149 documents, and identifying information in the corresponding
150 dockets, for an involuntary examination or treatment pursuant to
151 part I of chapter 394, Florida Statutes, that is contained in
152 such pleadings an documents, in order to preserve the privacy of
153 the individual alleged to be suffering from mental illness. The
154 personal health of an individual and his or her alleged mental
155 illness are intensely private matters. Making pleadings and
156 documents filed for involuntary examination or treatment
157 pursuant to part I of chapter 394, Florida Statutes,
158 confidential and exempt from disclosure will protect information
159 of a sensitive personal nature, the release of which could cause
160 unwarranted damage to the reputation of an individual. The
161 Legislature finds that the public disclosure of such information
162 in the pleadings and documents, or dockets concerning them,
163 would produce undue harm to an individual alleged to have a
164 mental illness. Further, the knowledge that sensitive personal
165 information is subject to disclosure could have a chilling
166 effect on the willingness of individuals to seek mental health
167 treatment.

168 Section 3. This act shall take effect July 1, 2016.
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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
An act relating to public records; amending s 394.4615, F.S.
providing exemptions from public records requirements for court
proceedings for involuntary examination and treatment under Part
I of Chapter 394, F.S.; listing persons to whom the clerk of the
court shall allow access to the petition; providing for future
legislative review and repeal of the exemptions; providing a
statement of public necessity; providing an effective date.