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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2016	.	
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

394.4615 ~~Clinical records~~; Confidentiality.—

(1) CLINICAL RECORDS.—

(a) ~~(1)~~ A clinical record shall be maintained for each  
patient. The record shall include data pertaining to admission



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11 and such other information as may be required under rules of the  
12 department. A clinical record is confidential and exempt from  
13 ~~the provisions of~~ s. 119.07(1). Unless waived by express and  
14 informed consent, by the patient or the patient's guardian or  
15 guardian advocate or, if the patient is deceased, by the  
16 patient's personal representative or the family member who  
17 stands next in line of intestate succession, the confidential  
18 status of the clinical record shall not be lost by either  
19 authorized or unauthorized disclosure to any person,  
20 organization, or agency.

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

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

29 2.~~(b)~~ The patient is represented by counsel and the records  
30 are needed by the patient's counsel for adequate representation.

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

36 4.~~(d)~~ The patient is committed to, or is to be returned to,  
37 the Department of Corrections from the Department of Children  
38 and Families, and the Department of Corrections requests such  
39 records. These records shall be furnished without charge to the



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40 Department of Corrections.

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

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

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

55  
56 For the purpose of determining whether a person meets the  
57 criteria for involuntary outpatient placement or for preparing  
58 the proposed treatment plan pursuant to s. 394.4655, the  
59 clinical record may be released to the state attorney, the  
60 public defender or the patient's private legal counsel, the  
61 court, and to the appropriate mental health professionals,  
62 including the service provider identified in s.  
63 394.4655(6)(b)2., in accordance with state and federal law.

64 (d)~~(4)~~ Information from clinical records may be used for  
65 statistical and research purposes if the information is  
66 abstracted in such a way as to protect the identity of  
67 individuals.

68 (e)~~(5)~~ Information from clinical records may be used by the



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69 Agency for Health Care Administration, the department, and the  
70 Florida advocacy councils for the purpose of monitoring facility  
71 activity and complaints concerning facilities.

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

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

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

83 ~~(i)(9)~~ ~~Nothing in~~ This subsection does not ~~section is~~  
84 ~~intended to prohibit~~ a ~~the~~ parent or next of kin of a person who  
85 is held in or treated under a mental health facility or program  
86 from requesting and receiving information limited to a summary  
87 of that person's treatment plan and current physical and mental  
88 condition. Release of such information shall be in accordance  
89 with the code of ethics of the profession involved.

90 ~~(j)(10)~~ Patients shall have reasonable access to their  
91 clinical records, unless such access is determined by the  
92 patient's physician to be harmful to the patient. If the  
93 patient's right to inspect his or her clinical record is  
94 restricted by the facility, written notice of such restriction  
95 shall be given to the patient and the patient's guardian,  
96 guardian advocate, attorney, and representative. In addition,  
97 the restriction shall be recorded in the clinical record,



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98 together with the reasons for it. The restriction of a patient's  
99 right to inspect his or her clinical record shall expire after 7  
100 days but may be renewed, after review, for subsequent 7-day  
101 periods.

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

108 (2) COURT RECORDS.-

109 (a) All pleadings, orders, and related records, and  
110 personal identifying information on a docket, held pursuant to  
111 this part are confidential and exempt from s. 119.07(1) and s.  
112 24(a), Art. I of the State Constitution.

113 (b) Pleadings, orders, and related records, and personal  
114 identifying information on a docket, made confidential and  
115 exempt by this subsection may be disclosed by the clerk of the  
116 court, upon request, to:

117 1. The petitioner.

118 2. The petitioner's attorney.

119 3. The respondent.

120 4. The respondent's attorney.

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.



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127 9. The respondent's patient representative.

128 10. A person or an entity authorized to view records and  
129 who has obtained a court order finding that there is good cause  
130 to release the records. In determining whether there is good  
131 cause for disclosure, the court shall weigh the need for the  
132 information to be disclosed against the possible harm of  
133 disclosure to the respondent.

134 11. An agency or a person authorized to receive clinical  
135 records pursuant to paragraphs (1)(b) and (1)(c).

136 (c) The exemption under this subsection applies  
137 retroactively.

138 (d) A person, an agency, or an entity receiving information  
139 pursuant to this subsection shall maintain such information as  
140 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
141 of the State Constitution.

142 Section 2. The Legislature finds that it is a public  
143 necessity to make confidential and exempt from s. 119.07(1),  
144 Florida Statutes, and s. 24(a), Article I of the State  
145 Constitution, all pleadings, orders, and related records, and  
146 personal identifying information on a docket, held pursuant to  
147 part I of chapter 394, Florida Statutes, in order to preserve  
148 the privacy of the individual who is or who is alleged to have a  
149 mental illness. An individual's personal health and mental  
150 health are intensely private matters. Making the pleadings,  
151 orders, and related records, and personal identifying  
152 information on a docket, of an individual who is subject to part  
153 I of chapter 394, Florida Statutes, confidential and exempt from  
154 disclosure will protect information of a sensitive personal  
155 nature, the release of which could cause unwarranted damage to



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156 the individual's reputation. Publication of personal identifying  
157 information of such an individual on a physical or virtual  
158 docket, even if no other records were published, would defeat  
159 the purpose and protections afforded by this exemption because a  
160 record of the individual's mental health proceedings would be  
161 available to the public. The Legislature further finds that the  
162 public disclosure of such pleadings, orders, and related  
163 records, and personal identifying information on a docket, would  
164 produce undue harm to an individual who has a mental illness or  
165 is alleged to have a mental illness. Furthermore, the knowledge  
166 that sensitive personal information is subject to public  
167 dissemination would have a chilling effect on the willingness of  
168 individuals to seek or comply with mental health treatment.

169 Section 3. This act shall take effect July 1, 2016.

170  
171 ===== T I T L E A M E N D M E N T =====

172 And the title is amended as follows:

173 Delete everything before the enacting clause  
174 and insert:

175 A bill to be entitled  
176 An act relating to public records; amending s.  
177 394.4615, F.S.; providing an exemption from public  
178 records requirements for pleadings, orders, and  
179 related records, and personal identifying information  
180 on a docket, held pursuant to part I of ch. 394, F.S.,  
181 relating to mental health services; authorizing the  
182 clerk of the court to disclose the records and  
183 information to specified persons upon request;  
184 providing for retroactive application; requiring a



185 person, an agency, or an entity that receives certain  
186 information to maintain it as confidential and exempt;  
187 providing a statement of public necessity; providing  
188 an effective date.