

By the Committees on Governmental Oversight and Accountability;
and Judiciary; and Senator Ring

585-02889-16

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1 A bill to be entitled

2 An act relating to public records; amending s.
3 394.4615, F.S.; providing an exemption from public
4 records requirements for pleadings, orders, and
5 related records, and personal identifying information
6 on a docket, held pursuant to part I of ch. 394, F.S.,
7 relating to mental health services; authorizing the
8 clerk of the court to disclose the records and
9 information to specified persons upon request;
10 providing for retroactive application; requiring a
11 person, an agency, or an entity that receives certain
12 information to maintain it as confidential and exempt;
13 providing a statement of public necessity; providing
14 an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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

20 394.4615 ~~Clinical records;~~ Confidentiality.-

21 (1) CLINICAL RECORDS.-

22 (a) ~~(1)~~ A clinical record shall be maintained for each
23 patient. The record shall include data pertaining to admission
24 and such other information as may be required under rules of the
25 department. A clinical record is confidential and exempt from
26 ~~the provisions of~~ s. 119.07(1). Unless waived by express and
27 informed consent, by the patient or the patient's guardian or
28 guardian advocate or, if the patient is deceased, by the
29 patient's personal representative or the family member who
30 stands next in line of intestate succession, the confidential
31 status of the clinical record shall not be lost by either

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32 authorized or unauthorized disclosure to any person,
33 organization, or agency.

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

35 1.~~(a)~~ The patient or the patient's guardian authorizes the
36 release. The guardian or guardian advocate shall be provided
37 access to the appropriate clinical records of the patient. The
38 patient or the patient's guardian or guardian advocate may
39 authorize the release of information and clinical records to
40 appropriate persons to ensure the continuity of the patient's
41 health care or mental health care.

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

44 3.~~(c)~~ The court orders such release. In determining whether
45 there is good cause for disclosure, the court shall weigh the
46 need for the information to be disclosed against the possible
47 harm of disclosure to the person to whom such information
48 pertains.

49 4.~~(d)~~ The patient is committed to, or is to be returned to,
50 the Department of Corrections from the Department of Children
51 and Families, and the Department of Corrections requests such
52 records. These records shall be furnished without charge to the
53 Department of Corrections.

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

56 1.~~(a)~~ When a patient has declared an intention to harm
57 other persons. When such declaration has been made, the
58 administrator may authorize the release of sufficient
59 information to provide adequate warning to the person threatened
60 with harm by the patient.

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61 2.~~(b)~~ When the administrator of the facility or secretary
62 of the department deems release to a qualified researcher as
63 defined in administrative rule, an aftercare treatment provider,
64 or an employee or agent of the department is necessary for
65 treatment of the patient, maintenance of adequate records,
66 compilation of treatment data, aftercare planning, or evaluation
67 of programs.

68

69 For the purpose of determining whether a person meets the
70 criteria for involuntary outpatient placement or for preparing
71 the proposed treatment plan pursuant to s. 394.4655, the
72 clinical record may be released to the state attorney, the
73 public defender or the patient's private legal counsel, the
74 court, and to the appropriate mental health professionals,
75 including the service provider identified in s.
76 394.4655(6)(b)2., in accordance with state and federal law.

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

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

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

88 (g)~~(7)~~ Any person, agency, or entity receiving information
89 pursuant to this subsection ~~section~~ shall maintain such

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90 information as confidential and exempt from the provisions of s.
91 119.07(1).

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

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

103 (j)~~(10)~~ Patients shall have reasonable access to their
104 clinical records, unless such access is determined by the
105 patient's physician to be harmful to the patient. If the
106 patient's right to inspect his or her clinical record is
107 restricted by the facility, written notice of such restriction
108 shall be given to the patient and the patient's guardian,
109 guardian advocate, attorney, and representative. In addition,
110 the restriction shall be recorded in the clinical record,
111 together with the reasons for it. The restriction of a patient's
112 right to inspect his or her clinical record shall expire after 7
113 days but may be renewed, after review, for subsequent 7-day
114 periods.

115 (k)~~(11)~~ A ~~Any~~ person who fraudulently alters, defaces, or
116 falsifies the clinical record of a ~~any~~ person receiving mental
117 health services in a facility subject to this part, or causes or
118 procures any of these offenses to be committed, commits a

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119 misdemeanor of the second degree, punishable as provided in s.
120 775.082 or s. 775.083.

121 (2) COURT RECORDS.—

122 (a) All pleadings, orders, and related records, and
123 personal identifying information on a docket, held pursuant to
124 this part are confidential and exempt from s. 119.07(1) and s.
125 24(a), Art. I of the State Constitution.

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

130 1. The petitioner.

131 2. The petitioner's attorney.

132 3. The respondent.

133 4. The respondent's attorney.

134 5. The respondent's guardian or guardian advocate, if
135 applicable.

136 6. In the case of a minor respondent, the respondent's
137 parent, guardian, legal custodian, or guardian advocate.

138 7. The respondent's treating health care practitioner.

139 8. The respondent's health care surrogate or proxy.

140 9. The respondent's patient representative.

141 10. A person or an entity authorized to view records and
142 who has obtained a court order finding that there is good cause
143 to release the records. In determining whether there is good
144 cause for disclosure, the court shall weigh the need for the
145 information to be disclosed against the possible harm of
146 disclosure to the respondent.

147 11. An agency or a person authorized to receive clinical

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148 records pursuant to paragraphs (1)(b) and (1)(c).

149 (c) The exemption under this subsection applies
150 retroactively.

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

155 Section 2. The Legislature finds that it is a public
156 necessity to make confidential and exempt from s. 119.07(1),
157 Florida Statutes, and s. 24(a), Article I of the State
158 Constitution, all pleadings, orders, and related records, and
159 personal identifying information on a docket, held pursuant to
160 part I of chapter 394, Florida Statutes, in order to preserve
161 the privacy of the individual who is or who is alleged to have a
162 mental illness. An individual's personal health and mental
163 health are intensely private matters. Making the pleadings,
164 orders, and related records, and personal identifying
165 information on a docket, of an individual who is subject to part
166 I of chapter 394, Florida Statutes, confidential and exempt from
167 disclosure will protect information of a sensitive personal
168 nature, the release of which could cause unwarranted damage to
169 the individual's reputation. Publication of personal identifying
170 information of such an individual on a physical or virtual
171 docket, even if no other records were published, would defeat
172 the purpose and protections afforded by this exemption because a
173 record of the individual's mental health proceedings would be
174 available to the public. The Legislature further finds that the
175 public disclosure of such pleadings, orders, and related
176 records, and personal identifying information on a docket, would

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177 produce undue harm to an individual who has a mental illness or
178 is alleged to have a mental illness. Furthermore, the knowledge
179 that sensitive personal information is subject to public
180 dissemination would have a chilling effect on the willingness of
181 individuals to seek or comply with mental health treatment.

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