

By Senator Mayfield

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1                   A bill to be entitled  
2           An act relating to medical records; amending s.  
3           395.3025, F.S.; revising costs that licensed  
4           facilities may include in their charge for patient  
5           records and reports; authorizing a flat fee for the  
6           furnishing of electronic medical records; amending s.  
7           456.057, F.S.; revising who may charge for reproducing  
8           a patient's records and who may receive the patient's  
9           records for certain costs; authorizing a flat fee for  
10          the furnishing of electronic medical records; removing  
11          the authority of boards and departments to specify the  
12          cost of patient medical records; amending ss.  
13          316.1932, 316.1933, 395.4025, and 440.185, F.S.;  
14          conforming provisions to changes made by the act;  
15          providing an effective date.

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

18  
19           Section 1. Subsection (1) of section 395.3025, Florida  
20           Statutes, is amended, present subsections (2) through (11) are  
21           redesignated as (4) through (13), respectively, and new  
22           subsections (2) and (3) are added to that section, to read:

23           395.3025 Patient and personnel records; copies;  
24           examination.—

25           (1) Any licensed facility shall, upon written request, and  
26           only after discharge of the patient, furnish, in a timely  
27           manner, without delays for legal review, to the patient or to  
28           ~~his or her any person admitted therein for care and treatment or~~  
29           ~~treated thereat, or to any such person's~~ guardian, curator,  
30           attorney, or personal representative, or in the absence of one  
31           of those persons, to the next of kin of a decedent or the parent  
32           of a minor, or to anyone designated by such person in writing, a

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33 true and correct copy of all patient records and reports,  
34 including X rays, and insurance information concerning such  
35 person, which ~~records~~ are in the possession of the licensed  
36 facility, provided the person requesting such records and  
37 reports agrees to pay a charge, if one is necessary. The  
38 exclusive charge for furnishing copies of patient records and  
39 reports or making the records and reports available for digital  
40 scanning under this section shall be no more than a reasonable,  
41 cost-based fee, provided that the fee includes only the cost of:

42 (a) Labor for copying the patient records and reports that  
43 the person requested, whether in paper or electronic form. Labor  
44 for copying includes only labor for creating and delivering the  
45 electronic or paper copy in the form and format the person  
46 requested or agreed upon. Reviewing the request for access and  
47 searching for, retrieving, and otherwise preparing the requested  
48 information for copying may not be used for purposes of  
49 calculating the fees that can be charged to individuals;

50 (b) Supplies for creating the paper copy or electronic  
51 media, if the individual requests that the electronic copy be  
52 provided on portable media;

53 (c) Postage, when the individual has requested the records  
54 and reports be mailed; and

55 (d) Sales tax ~~may include sales tax and actual postage,~~  
56 ~~and, except for nonpaper records that are subject to a charge~~  
57 ~~not to exceed \$2, may not exceed \$1 per page. A fee of up to \$1~~  
58 ~~may be charged for each year of records requested.~~

59  
60 These charges shall apply to all records furnished, whether  
61 directly from the facility or from a copy service providing

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62 these services on behalf of the facility. However, a patient  
63 whose records are copied or searched for the purpose of  
64 continuing to receive medical care is not required to pay a  
65 charge for copying or for the search. The licensed facility  
66 shall further allow any such person to examine the original  
67 records in its possession, or microforms or other suitable  
68 reproductions of the records, upon such reasonable terms as  
69 shall be imposed to assure that the records will not be damaged,  
70 destroyed, or altered.

71 (2) As an alternative to the fee charged in subsection (1),  
72 a licensed facility or a business operating on its behalf may  
73 charge individuals a flat fee for all requests for electronic  
74 copies of patient records and reports maintained electronically,  
75 provided the fee does not exceed \$6.50, inclusive of all labor,  
76 supplies, and any applicable postage.

77 (3) Costs associated with updates to or maintenance of  
78 systems and data, capital expenditures for data storage and  
79 maintenance, labor associated with ensuring compliance with 45  
80 C.F.R. s. 164.524 and other applicable laws in fulfilling the  
81 access request, and administrative and other costs associated  
82 with outsourcing the function of responding to individual  
83 requests for patient records and reports may not be used for  
84 purposes of calculating the fees that can be charged to  
85 individuals.

86 Section 2. Subsection (17) of section 456.057, Florida  
87 Statutes, is amended to read:

88 456.057 Ownership and control of patient records; report or  
89 copies of records to be furnished; disclosure of information.-

90 (17) A health care practitioner or records owner, or a

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91 business operating on his or her behalf, who is furnishing  
92 copies of reports or records or making the reports or records  
93 available for digital scanning under ~~pursuant to~~ this section  
94 for a patient; a patient's guardian, curator, attorney, or  
95 personal representative; or, in the absence of one of those  
96 persons, to the next of kin of a decedent or the parent of a  
97 minor, or to anyone designated by such person, shall charge no  
98 more than either the actual cost of copying, including  
99 reasonable staff time and postage, or a flat fee for all  
100 requests for electronic copies of patient records and reports  
101 maintained electronically, provided the fee does not exceed  
102 \$6.50, inclusive of all labor, supplies, and any applicable  
103 postage, ~~or the amount specified in administrative rule by the~~  
104 ~~appropriate board, or the department when there is no board.~~

105 Section 3. Paragraph (f) of subsection (1) of section  
106 316.1932, Florida Statutes, is amended to read:

107 316.1932 Tests for alcohol, chemical substances, or  
108 controlled substances; implied consent; refusal.—

109 (1)

110 (f)1. The tests determining the weight of alcohol in the  
111 defendant's blood or breath shall be administered at the request  
112 of a law enforcement officer substantially in accordance with  
113 rules of the Department of Law Enforcement. Such rules must  
114 specify precisely the test or tests that are approved by the  
115 Department of Law Enforcement for reliability of result and ease  
116 of administration, and must provide an approved method of  
117 administration which must be followed in all such tests given  
118 under this section. However, the failure of a law enforcement  
119 officer to request the withdrawal of blood does not affect the

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120 admissibility of a test of blood withdrawn for medical purposes.

121 2.a. Only a physician, certified paramedic, registered  
122 nurse, licensed practical nurse, other personnel authorized by a  
123 hospital to draw blood, or duly licensed clinical laboratory  
124 director, supervisor, technologist, or technician, acting at the  
125 request of a law enforcement officer, may withdraw blood for the  
126 purpose of determining its alcoholic content or the presence of  
127 chemical substances or controlled substances therein. However,  
128 the failure of a law enforcement officer to request the  
129 withdrawal of blood does not affect the admissibility of a test  
130 of blood withdrawn for medical purposes.

131 b. Notwithstanding any provision of law pertaining to the  
132 confidentiality of hospital records or other medical records, if  
133 a health care provider, who is providing medical care in a  
134 health care facility to a person injured in a motor vehicle  
135 crash, becomes aware, as a result of any blood test performed in  
136 the course of that medical treatment, that the person's blood-  
137 alcohol level meets or exceeds the blood-alcohol level specified  
138 in s. 316.193(1)(b), the health care provider may notify any law  
139 enforcement officer or law enforcement agency. Any such notice  
140 must be given within a reasonable time after the health care  
141 provider receives the test result. Any such notice shall be used  
142 only for the purpose of providing the law enforcement officer  
143 with reasonable cause to request the withdrawal of a blood  
144 sample pursuant to this section.

145 c. The notice shall consist only of the name of the person  
146 being treated, the name of the person who drew the blood, the  
147 blood-alcohol level indicated by the test, and the date and time  
148 of the administration of the test.

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149           d. Nothing contained in s. 395.3025(6) ~~s. 395.3025(4)~~, s.  
150 456.057, or any applicable practice act affects the authority to  
151 provide notice under this section, and the health care provider  
152 is not considered to have breached any duty owed to the person  
153 under s. 395.3025(6) ~~s. 395.3025(4)~~, s. 456.057, or any  
154 applicable practice act by providing notice or failing to  
155 provide notice. It shall not be a breach of any ethical, moral,  
156 or legal duty for a health care provider to provide notice or  
157 fail to provide notice.

158           e. A civil, criminal, or administrative action may not be  
159 brought against any person or health care provider participating  
160 in good faith in the provision of notice or failure to provide  
161 notice as provided in this section. Any person or health care  
162 provider participating in the provision of notice or failure to  
163 provide notice as provided in this section shall be immune from  
164 any civil or criminal liability and from any professional  
165 disciplinary action with respect to the provision of notice or  
166 failure to provide notice under this section. Any such  
167 participant has the same immunity with respect to participating  
168 in any judicial proceedings resulting from the notice or failure  
169 to provide notice.

170           3. The person tested may, at his or her own expense, have a  
171 physician, registered nurse, other personnel authorized by a  
172 hospital to draw blood, or duly licensed clinical laboratory  
173 director, supervisor, technologist, or technician, or other  
174 person of his or her own choosing administer an independent test  
175 in addition to the test administered at the direction of the law  
176 enforcement officer for the purpose of determining the amount of  
177 alcohol in the person's blood or breath or the presence of

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178 chemical substances or controlled substances at the time  
179 alleged, as shown by chemical analysis of his or her blood or  
180 urine, or by chemical or physical test of his or her breath. The  
181 failure or inability to obtain an independent test by a person  
182 does not preclude the admissibility in evidence of the test  
183 taken at the direction of the law enforcement officer. The law  
184 enforcement officer shall not interfere with the person's  
185 opportunity to obtain the independent test and shall provide the  
186 person with timely telephone access to secure the test, but the  
187 burden is on the person to arrange and secure the test at the  
188 person's own expense.

189 4. Upon the request of the person tested, full information  
190 concerning the results of the test taken at the direction of the  
191 law enforcement officer shall be made available to the person or  
192 his or her attorney. Full information is limited to the  
193 following:

194 a. The type of test administered and the procedures  
195 followed.

196 b. The time of the collection of the blood or breath sample  
197 analyzed.

198 c. The numerical results of the test indicating the alcohol  
199 content of the blood and breath.

200 d. The type and status of any permit issued by the  
201 Department of Law Enforcement which was held by the person who  
202 performed the test.

203 e. If the test was administered by means of a breath  
204 testing instrument, the date of performance of the most recent  
205 required inspection of such instrument.

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207 Full information does not include manuals, schematics, or  
208 software of the instrument used to test the person or any other  
209 material that is not in the actual possession of the state.  
210 Additionally, full information does not include information in  
211 the possession of the manufacturer of the test instrument.

212 5. A hospital, clinical laboratory, medical clinic, or  
213 similar medical institution or physician, certified paramedic,  
214 registered nurse, licensed practical nurse, other personnel  
215 authorized by a hospital to draw blood, or duly licensed  
216 clinical laboratory director, supervisor, technologist, or  
217 technician, or other person assisting a law enforcement officer  
218 does not incur any civil or criminal liability as a result of  
219 the withdrawal or analysis of a blood or urine specimen, or the  
220 chemical or physical test of a person's breath pursuant to  
221 accepted medical standards when requested by a law enforcement  
222 officer, regardless of whether or not the subject resisted  
223 administration of the test.

224 Section 4. Paragraph (a) of subsection (2) of section  
225 316.1933, Florida Statutes, is amended to read:

226 316.1933 Blood test for impairment or intoxication in cases  
227 of death or serious bodily injury; right to use reasonable  
228 force.-

229 (2) (a) Only a physician, certified paramedic, registered  
230 nurse, licensed practical nurse, other personnel authorized by a  
231 hospital to draw blood, or duly licensed clinical laboratory  
232 director, supervisor, technologist, or technician, acting at the  
233 request of a law enforcement officer, may withdraw blood for the  
234 purpose of determining the alcoholic content thereof or the  
235 presence of chemical substances or controlled substances

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236 therein. However, the failure of a law enforcement officer to  
237 request the withdrawal of blood shall not affect the  
238 admissibility of a test of blood withdrawn for medical purposes.

239 1. Notwithstanding any provision of law pertaining to the  
240 confidentiality of hospital records or other medical records, if  
241 a health care provider, who is providing medical care in a  
242 health care facility to a person injured in a motor vehicle  
243 crash, becomes aware, as a result of any blood test performed in  
244 the course of that medical treatment, that the person's blood-  
245 alcohol level meets or exceeds the blood-alcohol level specified  
246 in s. 316.193(1)(b), the health care provider may notify any law  
247 enforcement officer or law enforcement agency. Any such notice  
248 must be given within a reasonable time after the health care  
249 provider receives the test result. Any such notice shall be used  
250 only for the purpose of providing the law enforcement officer  
251 with reasonable cause to request the withdrawal of a blood  
252 sample pursuant to this section.

253 2. The notice shall consist only of the name of the person  
254 being treated, the name of the person who drew the blood, the  
255 blood-alcohol level indicated by the test, and the date and time  
256 of the administration of the test.

257 3. Nothing contained in s. 395.3025(6) ~~s. 395.3025(4)~~, s.  
258 456.057, or any applicable practice act affects the authority to  
259 provide notice under this section, and the health care provider  
260 is not considered to have breached any duty owed to the person  
261 under s. 395.3025(6) ~~s. 395.3025(4)~~, s. 456.057, or any  
262 applicable practice act by providing notice or failing to  
263 provide notice. It shall not be a breach of any ethical, moral,  
264 or legal duty for a health care provider to provide notice or

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265 fail to provide notice.

266 4. A civil, criminal, or administrative action may not be  
267 brought against any person or health care provider participating  
268 in good faith in the provision of notice or failure to provide  
269 notice as provided in this section. Any person or health care  
270 provider participating in the provision of notice or failure to  
271 provide notice as provided in this section shall be immune from  
272 any civil or criminal liability and from any professional  
273 disciplinary action with respect to the provision of notice or  
274 failure to provide notice under this section. Any such  
275 participant has the same immunity with respect to participating  
276 in any judicial proceedings resulting from the notice or failure  
277 to provide notice.

278 Section 5. Subsection (12) of section 395.4025, Florida  
279 Statutes, is amended to read:

280 395.4025 Trauma centers; selection; quality assurance;  
281 records.—

282 (12) Patient care, transport, or treatment records or  
283 reports, or patient care quality assurance proceedings, records,  
284 or reports obtained or made pursuant to this section, s.  
285 395.3025(6)(f) ~~s. 395.3025(4)(f)~~, s. 395.401, s. 395.4015, s.  
286 395.402, s. 395.403, s. 395.404, s. 395.4045, s. 395.405, s.  
287 395.50, or s. 395.51 must be held confidential by the department  
288 or its agent and are exempt from the provisions of s. 119.07(1).  
289 Patient care quality assurance proceedings, records, or reports  
290 obtained or made pursuant to these sections are not subject to  
291 discovery or introduction into evidence in any civil or  
292 administrative action.

293 Section 6. Subsection (4) of section 440.185, Florida

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294 Statutes, is amended to read:

295       440.185 Notice of injury or death; reports; penalties for  
296 violations.—

297       (4) Additional reports with respect to such injury and of  
298 the condition of such employee, including copies of medical  
299 reports, funeral expenses, and wage statements, shall be filed  
300 by the employer or carrier to the department at such times and  
301 in such manner as the department may prescribe by rule. In  
302 carrying out its responsibilities under this chapter, the  
303 department or agency may by rule provide for the obtaining of  
304 any medical records relating to medical treatment provided  
305 pursuant to this chapter, notwithstanding the provisions of ss.  
306 90.503 and 395.3025(6) ~~395.3025(4)~~.

307       Section 7. This act shall take effect upon becoming a law.