

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1035 Patient Access to Records
SPONSOR(S): Health & Human Services Committee, Rommel
TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|---------|---|
| 1) Health Quality Subcommittee | 12 Y, 2 N | McElroy | McElroy |
| 2) Health Care Appropriations Subcommittee | 9 Y, 0 N | Nobles | Clark |
| 3) Health & Human Services Committee | 14 Y, 3 N, As CS | McElroy | Calamas |

SUMMARY ANALYSIS

Patient engagement in their healthcare leads to better health outcomes, reduces administrative costs and increases patient satisfaction through better communication with providers. Patient access to treatment records is necessary for active engagement to occur. The use of electronic health records, patient portals and electronic personal health records by providers and patients facilitates access and, by default engagement.

HB 1035 allows patients, nursing home residents and their legal representatives to control how they receive requested records. Health care providers and facilities must produce the requested records in the manner selected by the patient. Patients, nursing home residents and legal representatives may request records in paper or electronic format, through access in a web-based patient portal or to be submitted directly by a health care provider or facility into a patient's electronic personal health record.

Florida has enacted laws governing patient access records; however these laws lack standardization. The cost of copies, the right to inspect records, whether the records have to be produced in paper form or electronically, and the timeframe to produce copies are different depending on which kind of health care facility or health care practitioner is involved.

HB 1035 also standardizes access to treatment records for patients, residents and legal representatives. It standardizes the timeframe that health care providers and facilities must produce records or allow inspection of records. All health care practitioners and facilities, excluding nursing homes, must provide records within 14 days of a request and allow inspection within 10 days. The bill also standardizes the patient cost for reproducing treatment records.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Access to Medical and Clinical Records – Federal Law

Health Insurance Portability and Accountability Act

The federal Health Insurance Portability and Accountability Act (HIPAA), enacted in 1996, protects personal health information (PHI).¹ In 2000, the U.S. Department of Health and Human Services promulgated privacy rules which established national standards to protect medical records and other PHI.² These rules address, among other things, the use and disclosure of an individual's PHI.

Only certain entities are subject to HIPAA's provisions. These "covered entities" include:

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of any of the above.³

HIPAA requires the disclosure of an individual's PHI to the individual who is the subject of the PHI information or his or her personal representative,⁴ upon his or her request.⁵ A covered entity must produce the PHI in the electronic form and format requested by the individual, if it is readily producible in such form and format.⁶ Under HIPAA, if an individual requests a copy of his or her PHI or a summary or explanation of such information, a covered entity may charge a reasonable, cost-based fee, provided the fee includes only the cost of:

- Labor for copying the PHI, whether in paper or electronic form;⁷
- Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media;
- Postage, when the individual has requested the copy, or summary or explanation, be mailed; and
- Preparing an explanation or summary of the PHI.⁸

¹ Pub. L. No. 104-191 (1996). Protected health information includes all individually identifiable health information held or transmitted by a covered entity or its business associate.

² U.S. Department of Health and Human Services, *Health Information Privacy*, available at <https://www.hhs.gov/hipaa/for-professionals/privacy/index.html> (last visited March 10, 2019). The rules were modified in 2002.

³ U.S. Department of Health and Human Services, Office for Civil Rights, *Summary of the HIPAA Privacy Rule*, (last rev. May 2003), available at <https://www.hhs.gov/sites/default/files/privacysummary.pdf>. (last visited March 10, 2019).

⁴ *Supra*, FN 2. A personal representative is generally a person with authority under state law to make health care decisions on behalf of an individual.

⁵ *Supra*, FN 3. HIPAA limits the access to psychotherapy notes, certain lab results, and information compiled for legal proceedings. A covered entity may also deny access to personal health information in certain situations, such as when a health care practitioner believes access could cause harm to the individual or others.

⁶ 45 CFR § 164.524(c)(2)(i).

⁷ U.S. Department of Health and Human Services, *Individuals' Right under HIPAA to Access their Health Information 45CFR§ 164.524*, available at <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/#maximumflatfee> (last visited March 10, 2019).

Examples of the type of labor included is the labor to photocopy PHI, scanning paper PHI into an electronic format, converting electronic PHI into the format requested, transferring PHI from the covered entity's system to another delivery mechanism, such as a web portal or e-mail, or creating and executing a mailing or e-mail with the responsive PHI.

⁸ 45 C.F.R. s. 164.524(c)(4).

The fee may not include costs associated with verification; documentation; searching for and retrieving personal health information; maintaining systems; or recouping capital for data access, storage, or infrastructure or other costs not listed above, even if such costs are authorized by state law.⁹ In lieu of calculating the actual cost of labor individually for each request, a covered entity may develop a schedule of costs for labor based on the average labor costs to fulfill standard types of requests, as long as the types of labor costs include only those costs permitted under HIPAA and are reasonable.¹⁰ A per page fee may be charged only when the PHI is maintained in paper format and the individual requests a paper copy of the PHI or asks that the paper PHI be scanned into electronic format.¹¹

A covered entity may charge individuals a flat fee for all requests for electronic copies of PHI maintained electronically, inclusive of all labor, supplies, and any applicable postage. The flat fee may not exceed \$6.50.¹² The flat fee is an option for entities that do not want to go through the process of calculating actual or average allowable costs for requests for electronic copies of PHI maintained electronically.

A covered entity must inform an individual of the approximate fees to be charged, in advance of completing the request.¹³ Access to the individual's personal health records must be provided in a form or format requested by the individual if it is readily producible in such form or format, and must generally be provided within 30 days of the request.¹⁴ Under HIPAA, a covered entity must generally obtain an individual's written authorization to disclose PHI; however, there are circumstances in which a covered entity may release records without authorization.¹⁵

In general, HIPAA privacy rules preempt any state law that is contrary to its provisions.¹⁶ However, if the state law is more stringent, the state law will apply.

Requirements for Long-Term Care Facilities

Access to medical and clinical records by residents of a nursing home receiving federal funding is controlled by 42 CFR s. 483.10 not HIPAA. Such nursing homes are required to provide residents with access to their records within 24 hours (excluding holidays and weekends) and a copy of any requested records within two working days of request.¹⁷ A nursing home may impose a reasonable, cost-based fee for copies, if the fee includes only the cost of:¹⁸

- Labor for copying the records requested by the individual, whether in paper or electronic form;
- Supplies for creating the paper copy or electronic media; and,
- Postage, if the resident requests the copy be mailed.

Currently, all but two of the licensed nursing homes in this state receive federal funding and would be subject to these requirements.¹⁹ In 2018, the Agency for Health Care Administration cited six nursing homes for failing to meet these requirements.²⁰

⁹ Supra, FN 7.

¹⁰ Id.

¹¹ Id. Per page fees for copies of PHI maintained electronically are not considered reasonable under HIPAA.

¹² Id.

¹³ Supra, FN 2.

¹⁴ 45 C.F.R. s. 164.524.

¹⁵ Supra, FN 3. For example, PHI may be released without a patient's authorization for public health activities, law enforcement purposes, or for certain victims of abuse, neglect, or domestic violence.

¹⁶ 45 C.F.R. s. 160.203.

¹⁷ 42 CFR s. 483.10(2)(g)

¹⁸ Id.

¹⁹ Correspondence from the Agency for Health Care Administration to committee staff dated March 31, 2019, on file with the Health and Human Services Committee.

²⁰ Correspondence from the Agency for Health Care Administration to committee staff dated April 2, 2019, on file with the Health and Human Services Committee.

Access to Medical and Clinical Records – Florida Law

Facilities

Chapter 408, F.S., is the core licensure act for health care facilities. Any requirement contained within this chapter applies to all health care facilities, which includes:²¹

- Laboratories authorized to perform testing under the Drug-Free Workplace Act;
- Birth centers;
- Abortion clinics;
- Crisis stabilization units;
- Short-term residential treatment facilities;
- Residential treatment facilities;
- Residential treatment centers for children and adolescents;
- Hospitals;
- Ambulatory surgical centers;
- Nursing homes;
- Assisted living facilities;
- Home health agencies;
- Nurse registries;
- Companion services or homemaker services providers;
- Adult day care centers;
- Hospices;
- Adult family-care homes;
- Homes for special services;
- Transitional living facilities;
- Prescribed pediatric extended care centers;
- Home medical equipment providers;
- Intermediate care facilities for persons with developmental disabilities;
- Health care services pools;
- Health care clinics; and,
- Multiphasic health testing centers.

Currently, Chapter 408 does not include a statute establishing standard requirements for health care facilities to produce, or allow inspection of, a patient's or resident's medical, clinical and interdisciplinary records. Rather, the requirements are in each facility licensure act and vary, sometimes greatly. Some health care facilities do not have statutory requirements related to a patient's access to records.

Hospitals, Ambulatory Surgical Centers, and Mobile Surgical Centers

After a patient has been discharged, a licensed hospital, ambulatory surgical center, and mobile surgical center (licensed facility) must, upon written request, timely provide patient records in its possession to the patient.²² The records may also be released to the patient's guardian, curator, or personal representative, or in the absence of one of those persons, to the next of kin of a decedent or the parent of the minor, or to any other person designated in writing by such patient. A licensed facility must also allow a patient or their representative access to examine the records in its possession, but may establish reasonable terms to assure that the records will not be damaged, destroyed, or altered.²³ There is no statutorily established timeframe for when a licensed facility must provide this access.

²¹ Ss. 408.803(11) F.S., and 408.802, F.S.

²² S. 395.3025, F.S. This does not apply to facilities that primarily provide psychiatric care or certain clinical records created at any licensed facility concerning certain mental health or substance abuse services.

²³ S. 395.3025(1), F.S.

The fee a licensed facility may charge for the reproduction of medical records is determined by statute.²⁴ For reproduction of paper records, the fee is limited to \$1.00 per page, plus sales tax and actual postage. A licensed facility may charge no more than \$2.00 for a non-paper record. A fee of up to \$1.00 may be charged for each year of records requested. These charges apply to all records furnished directly from the licensed facility or by a copy service on behalf of the licensed facility. A licensed facility may not charge a patient for copying or searching for the records, if a patient requests medical records so that he or she can continue receiving medical care.²⁵

Nursing Homes

Upon request, a nursing home must provide a competent resident with a copy of any paper and electronic records of the resident which it has in its possession.²⁶ Such records must include any medical records and records concerning the care and treatment of the resident performed by the nursing home, except for notes and report sections of a psychiatric nature.²⁷ A nursing home must provide these records within 14 days for a current resident and 30 days for a former resident.²⁸ A nursing home may refuse to furnish these records directly to a resident if it determines that disclosure would be detrimental to the resident's physical or mental health.²⁹ However, upon such a refusal, a resident may have his or her records furnished to a medical provider designated by the resident.³⁰

A nursing home may charge a reasonable fee for the copying of resident records.³¹ Such fee may not exceed \$1 per page for the first 25 pages and 25 cents per page for each additional page.³²

A nursing home must also allow a resident's representative access to examine the records in its possession, but may establish reasonable terms to assure that the records will not be damaged, destroyed, or altered.³³ There is no statutorily established timeframe for when a nursing home must provide this access.

Mental Health Facilities

A clinical record is required for each patient receiving treatment for mental illness at a receiving facility³⁴ or treatment facility.³⁵ The treatment or receiving facility must release a patient's clinical records if requested by the patient, the patient's guardian or counsel or the Department of Corrections.³⁶ There is no statutorily timeframe for when a receiving or treatment facility must provide the requested clinical records. Additionally, there is no statutory established fee for what a treatment or receiving facility may charge for producing a patient's clinical record.

²⁴ Id.

²⁵ Id.

²⁶ S. 400.145(1), F.S.

²⁷ Id.

²⁸ Id.

²⁹ S. 400.145(5), F.S.

³⁰ Id.

³¹ S. 400.145(4), F.S.

³² Id.

³³ Id.

³⁴ A "receiving facility" is a public or private facility or hospital designated by the Department of Children and Families to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider. S. 394.455(39), F.S.

³⁵ S. 394.4615(1), F.S.; A "treatment facility" is a state-owned, state-operated, or state-supported hospital, center, or clinic designated by the Department of Children and Families for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the Department of Children and Families when rendering such services. S. 394.455(47), F.S.

³⁶ S. 394.4615(2), F.S.

Hospices

A hospice is required to release a patient's interdisciplinary record if requested by an individual authorized by the patient or by the court.³⁷ There is no statutorily established timeframe for when a hospice must release a patient's interdisciplinary record. Additionally, there is no statutory established fee for what a hospice may charge for producing a patient's interdisciplinary record.

Practitioners

Unlike the law for health care facilities, health care practitioner law has standardized records access requirements that apply to all practitioners.³⁸ A practitioner must provide a copy of patient medical records to the patient if requested by the patient or his or her legal representative.³⁹ The patient's medical records must be released without delay for legal review.

A health care practitioner may charge the actual costs of copying, including reasonable staff time, or the amount established by the appropriate regulatory board, or the Department of Health (DOH), for the duplication of medical records.⁴⁰ This applies regardless of whether it is a paper record or the record is made available for digital scanning.⁴¹ The Board of Medicine (Allopathic Board) and the Board of Osteopathic Medicine (Osteopathic Board) have adopted rules related to the fees its licensees may charge for copying patient medical records.

Board of Osteopathic Medicine Rule

An osteopathic physician may charge up to \$1.00 per page for the first 25 pages, and no more than 25 cents for each subsequent page, regardless of the requestor.⁴² An osteopathic physician must comply with a patient's written request for records within 30 days of such request unless there are circumstances beyond the osteopathic physician's control that prevents such compliance.⁴³ An osteopathic physician may charge the actual cost for reproducing certain documents, such as x-rays and other special kinds of records.⁴⁴ Actual costs include the materials, supplies, labor, and overhead costs associated with such duplication.⁴⁵

Board of Medicine Rule

An allopathic physician may charge a patient or governmental entity a \$1.00 per page for the first 25 pages, and no more than 25 cents for each subsequent page.⁴⁶ For all other entities, an allopathic physician may charge up to \$1.00 per page. An allopathic physician may charge the actual cost for

³⁷ S. 400.611(3), F.S.

³⁸ A health care practitioner is any person licensed under ch. 457, F.S., (acupuncture); ch. 458, F.S., (medical practice); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathy); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry, dental hygiene, and dental laboratories); ch. 467, F.S., (midwifery); part I, part II, part III, part V, part X, part XIII, or part XIV of ch. 468, F.S., (speech language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, or orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrolysis); ch. 480, F.S., (massage practice); part III or part IV of ch. 483, F.S., (clinical laboratory personnel or medical physicists); ch. 484, F.S., (dispensers of optical devices and hearing aids); ch. 486, F.S., (physical therapy practice); ch. 490, F.S., (psychological services); or ch. 491, F.S., (clinical, counseling, and psychotherapy services).

³⁹ S. 456.057, F.S. In lieu of copies of certain medical records related to psychiatric or psychological treatment, a practitioner may release a report of examination and treatment.

⁴⁰ S. 456.057(17), F.S.

⁴¹ Id.

⁴² Rule 64B15-15.003, F.A.C.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id. The Board of Medicine has a proposed rule pending that authorizes allopathic physicians to charge patients a fee of \$1.00 per page regardless of whether the records were produced in paper or electronic form.

reproducing certain documents, such as x-rays and other special kinds of records.⁴⁷ Actual costs include the materials, supplies, labor, and overhead costs associated with such duplication.⁴⁸

Medical Records Held by Substance Abuse Providers

A substance abuse service provider may only release records with the written consent of the individual whom they pertain.⁴⁹ However, under limited circumstances, such as a medical emergency, the service provider may release records without the consent of the individual whom they pertain.⁵⁰ There is no statutorily established timeframe for a service provider to release requested records. Additionally, there is no statutorily established fee for what a service provider may charge for producing requested records.

Electronic Medical Records Patient Portals

Patent portals are health care provider-owned and -operated electronic applications which give patients secure access to protected health information and allow secure methods for communicating and sharing information with health care providers.⁵¹ These portals are typically connected to the electronic health records of a particular health care provider, practice group or institution.⁵²

Portals vary in sophistication ranging from those which only allow patients to view medical records to those which allow patients to access specific-patient educational materials, schedule appointments and request prescription refills.⁵³ Improved access to records and health care providers can promote better informed health care decision-making and patient engagement.⁵⁴

One of the drawbacks to patient portals is the inability of patients to have a centralized repository of their health care records. Patient portals are owned by health care providers, rather than by patients, and may not be interoperable with the electronic health records of another provider. A patient who receives treatment or services from multiple health care providers or facilities could feasibly have his or her records dispersed between multiple patient portals.

Electronic Personal Health Record

An electronic personal health record (PHR) is a patient owned electronic application through which individuals can access, manage and share health information in a private, secure and confidential environment.⁵⁵ PHRs that are offered by health plans or health care providers are subject to the HIPAA privacy rule.⁵⁶ PHRs that are offered by vendors, employers and other non-covered entities are not subject to the HIPAA privacy rule. These entities have contractual privacy policies, which may vary, but are required under federal law to notify customers in the event of a security breach.⁵⁷

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ S. 397.501(7)(a), F.S.

⁵⁰ Id.

⁵¹ Kooij, Groen, van Harten, *Barriers and Facilitators Affecting Patient Portal Implementation from an Organizational Perspective: Qualitative Study*, J Med Internet Res. 2018 May; 20(5): e183, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5970285/> (last viewed March 10, 2019).

⁵² Id.

⁵³ Griffin, Skinner, Thornhill, Weinberger, *Patient Portals: Who uses them? What features do they use? And do they reduce hospital readmissions?*, Appl Clin Inform. 2016; 7(2): 489–501, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4941855/> (last visited on March 10, 2019).

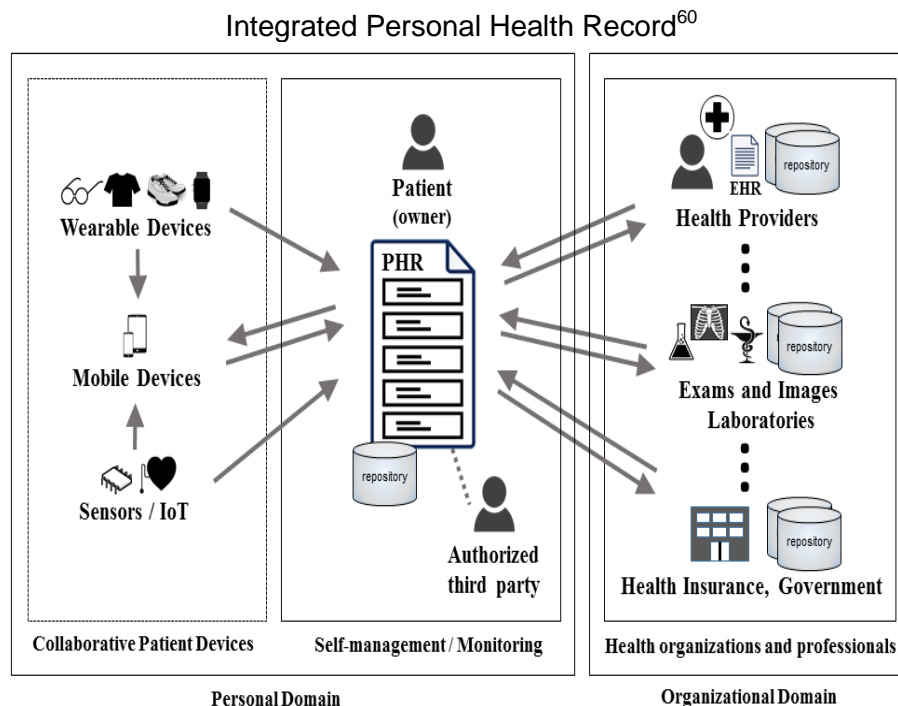
⁵⁴ Id.

⁵⁵ Tang, Ash, Bates, Overhage, and Sands, *Personal Health Records: Definitions, Benefits, and Strategies for Overcoming Barriers to Adoption*, J Am Med Inform Assoc., 2006 Mar-Apr; 13(2): 121-126, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447551/pdf/121.pdf> (last visited March 10, 2019).

⁵⁶ *Personal Health Records and the HIPAA Privacy Rule*, U.S. Department of Health and Human Services, Office for Civil Rights, available at <https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/healthit/phrs.pdf> (last visited March 10, 2019).

⁵⁷ 16 CFR § 318.3.

A PHR can be stand-alone or integrated. In a stand-alone PHR, the individual enters all information into the record.⁵⁸ This can be done manually by entering the medical data or by uploading medical records into the PHR. In an integrated PHR, information is submitted directly through electronic health care devices and through health care provider's electronic health records system.⁵⁹



Potential benefits of the use of a PHR, for patients, health care providers, and health care systems include:⁶¹

- **Empowerment of patients.** PHRs let patients verify the information in their medical record and monitor health data about themselves (very useful in chronic disease management). PHRs also provide scheduling reminders for health maintenance services.
- **Improved patient-provider relationships.** PHRs improve communication between patients and clinicians, allow documentation of interactions with patients and convey timely explanations of test results.
- **Increased patient safety.** PHRs provide drug alerts, help identify missed procedures and services, and get important test results to patients rapidly. PHRs also give patients timely access to updated care plans.
- **Improved quality of care.** PHRs enable continuous, comprehensive care with better coordination between patients, physicians and other providers.
- **More efficient delivery of care.** PHRs help avoid duplicative testing and unnecessary services. They provide more efficient communication between patients and physicians (e.g., avoiding congested office phones).
- **Better safeguards on health information privacy.** By giving patients control of access to their records, PHRs offer more selectivity in sharing of personal health information.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Roehrs A, da Costa CA, da Rosa Righi R, de Oliveira KSF, *Personal Health Records: A Systematic Literature Review*, J Med Internet Res 2017;19(1):e13, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5251169/> (last visited on March 10, 2019)

⁶¹ Endsley, Kibbe, Linares, MD, Colorafi, *An Introduction to Personal Health Records*, Fam Pract Manag. 2006 May;13(5):57-62, <https://www.aafp.org/fpm/2006/0500/p57.html> (last visited on March 10, 2019).

- **Bigger cost savings.** Improved documentation brought about by PHRs can decrease malpractice costs. PHRs' ability to reduce duplicative tests and services is a factor here, too.

PHRs can also potentially be beneficial in ensuring continuity of care in mass evacuations situations, such as hurricanes and brushfires.⁶²

There are numerous potential barriers to the adoption and use of PHRs. These include privacy and security concerns, costs, integrity, accountability, health literacy and legal and liability risk.⁶³

Effect of Proposed Changes

HB 1035 allows patients, residents and legal representatives to control how they receive requested records. Health care providers and facilities may produce the requested records in paper or electronic format, upon request. However, health care providers and facilities must produce the requested records in an electronic format, including access through a web-based patient portal or submission into a patient's electronic personal health record, if the health care provider or facility maintains an electronic health recordkeeping system.

HB 1035 also standardizes access to treatment records for patients, residents and legal representatives, excluding nursing homes residents, predominantly utilizing elements of existing law or rule. It standardizes the timeframe that health care providers and facilities must produce records or allow inspection of records. All health care practitioners and facilities must provide records within 14 days of a request. This is current law for the production of documents for a current resident of a nursing home. The bill also requires health care facilities and providers to allow inspection of records within 10 days. The right to inspect records is current law for licensed facilities and nursing homes, although neither of these sections provide a timeframe for allowing inspection. The bill also standardizes the patient cost for reproducing treatment records. All health care providers and facilities may charge:

- \$1 per page for the first 25 pages and 25 cents for every page thereafter for paper copies (current Board of Medicine rule and law for nursing homes);
- \$2 for electronic records (current law for licensed facilities); and,
- Actual costs incurred in producing X-Rays or similar records (current Board of Medicine rule).

Federal law currently requires nursing homes to provide residents with access to their records within 24 hours (excluding holidays and weekends) and a copy of any requested records within two working days of request. The bill incorporates these timelines into Florida law.

The bill defines "legal representative" as a client's attorney who has been designated by the patient or resident to receive copies of the patient's or resident's medical, care and treatment, or interdisciplinary records; any legally recognized guardian of the patient or resident; any court appointed representative of the patient or resident; or any person designated by the patient or resident or by a court of competent jurisdiction to receive copies of the patient's or resident's medical, care and treatment, or interdisciplinary records. This is current definition of legal representative found in the Board of Medicine's rules.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

⁶² Tang, Ash, Bates, Overhage, and Sands, *Personal Health Records: Definitions, Benefits, and Strategies for Overcoming Barriers to Adoption*, J Am Med Inform Assoc., 2006 Mar-Apr; 13(2): 121-126, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447551/pdf/121.pdf> (last visited March 10, 2019).

⁶³ Vance, Tomblin, Studney, Coustasse, *Benefits and Barriers for Adoption of Personal Health Records*, 2015, https://mds.marshall.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1135&context=mgmt_faculty (last visited March 10, 2019).

- Section 1:** Amends s. 394.4615, F.S., relating to clinical records confidentiality.
- Section 2:** Amends s. 395.3025, F.S., relating to patient and personnel records.
- Section 3:** Amends s. 397.501, F.S., relating to rights of individuals.
- Section 4:** Amends s. 400.145, F.S., relating to copies of records of care and treatment of a resident.
- Section 5:** Creates s. 408.833, F.S., relating to client access to medical records.
- Section 6:** Amends s. 456.057, F.S., relating to ownership and control of patient records.
- Section 7:** Amends s. 316.1932, F.S., relating to tests for alcohol, chemical substances, or controlled substances.
- Section 8:** Amends s. 316.1933, F.S., relating to blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.
- Section 9:** Amends s. 395.4025, F.S., relating to trauma centers.
- Section 10:** Amends s. 440.185, F.S., relating to notice of injury or death.
- Section 11:** Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care providers and facilities and third-party record vendors may incur a loss of revenue related to the reduction in the amount that may be charged to a patient or resident for the production of records in a paper or electronic format.

Patients and residents will likely experience a reduction in costs for obtaining treatment records.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 9, 2019, the Health and Human Services Committee adopted an amendment that:

- Aligned Florida law with the timeframe that a nursing home must produce records or allow inspection of records under federal law.
- Removed the flat fee of \$1 that a provider can charge a patient for each year of records requested in a request for electronic records.
- Required a provider to give patients their medical records in an electronic format only if the provider has an electronic health records system.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.