

1 A bill to be entitled
2 An act relating to patient access to records; amending
3 s. 394.4615, F.S.; requiring a service provider to
4 furnish and provide access to records within a
5 specified timeframe after receiving a request for such
6 records; requiring that certain service providers
7 furnish such records in the manner chosen by the
8 requester; amending s. 395.3025, F.S.; removing
9 provisions requiring a licensed facility to furnish
10 patient records only after discharge to conform to
11 changes made by the act; revising provisions relating
12 to the appropriate disclosure of patient records
13 without consent; amending s. 397.501, F.S.; requiring
14 a service provider to furnish and provide access to
15 records within a specified timeframe after receiving a
16 request from an individual or the individual's legal
17 representative; requiring that certain service
18 providers furnish such records in the manner chosen by
19 the requester; amending s. 400.145, F.S.; revising the
20 timeframe within which a nursing home facility must
21 provide access to and copies of resident records after
22 receiving a request for such records; creating s.
23 408.833, F.S.; providing a definition; requiring a
24 provider to furnish and provide access to records
25 within a specified timeframe after receiving a request

26 | from a client or the client's legal representative;
27 | requiring that certain providers furnish such records
28 | in the manner chosen by the requester; authorizing a
29 | provider to impose reasonable terms necessary to
30 | preserve such records; amending s. 456.057, F.S.;
31 | requiring certain licensed health care practitioners
32 | to furnish and provide access to copies of reports and
33 | records within a specified timeframe after receiving a
34 | request from a patient or the patient's legal
35 | representative; requiring that certain licensed health
36 | care practitioners furnish such reports and records in
37 | the manner chosen by the requester; providing a
38 | definition; authorizing such licensed health care
39 | practitioners to impose reasonable terms necessary to
40 | preserve such reports and records; amending ss.
41 | 316.1932, 316.1933, 395.4025, 429.294, and 440.185,
42 | F.S.; conforming cross-references; providing an
43 | effective date.

44 |
45 | Be It Enacted by the Legislature of the State of Florida:

46 |
47 | Section 1. Subsections (3) through (11) of section 394.4615,
48 | Florida Statutes, are renumbered as subsections (4) through
49 | (12), respectively, and a new subsection (3) is added to that
50 | section, to read:

51 394.4615 Clinical records; confidentiality.—

52 (3) Within 14 working days after receiving a request made
53 in accordance with paragraphs (2) (a)-(c), a service provider
54 must furnish clinical records in its possession. A service
55 provider may furnish the requested records in paper form or,
56 upon request, in an electronic format. A service provider who
57 maintains an electronic health record system shall furnish the
58 requested records in the manner chosen by the requester which
59 must include electronic format, access through a web-based
60 patient portal, or submission through a patient's electronic
61 personal health record.

62 Section 2. Subsections (4) through (11) of section
63 395.3025, Florida Statutes, are renumbered as subsections (2)
64 through (7), respectively, and subsections (1), (2), and (3),
65 paragraph (e) of present subsection (4), present subsection (5),
66 paragraph (a) of present subsection (7), and present subsection
67 (8) of that section, are amended to read:

68 395.3025 Patient and personnel records; copy costs ~~copies~~;
69 examination.—

70 ~~(1) Any licensed facility shall, upon written request, and~~
71 ~~only after discharge of the patient, furnish, in a timely~~
72 ~~manner, without delays for legal review, to any person admitted~~
73 ~~therein for care and treatment or treated thereat, or to any~~
74 ~~such person's guardian, curator, or personal representative, or~~
75 ~~in the absence of one of those persons, to the next of kin of a~~

76 ~~decedent or the parent of a minor, or to anyone designated by~~
77 ~~such person in writing, a true and correct copy of all patient~~
78 ~~records, including X rays, and insurance information concerning~~
79 ~~such person, which records are in the possession of the licensed~~
80 ~~facility, provided the person requesting such records agrees to~~
81 ~~pay a charge.~~ The exclusive charge for copies of patient records
82 may include sales tax and actual postage, and, except for
83 nonpaper records that are subject to a charge not to exceed \$2,
84 may not exceed \$1 per page. A fee of up to \$1 may be charged for
85 each year of records requested. These charges shall apply to all
86 records furnished, whether directly from the facility or from a
87 copy service providing these services on behalf of the facility.
88 However, a patient whose records are copied or searched for the
89 purpose of continuing to receive medical care is not required to
90 pay a charge for copying or for the search. ~~The licensed~~
91 ~~facility shall further allow any such person to examine the~~
92 ~~original records in its possession, or microforms or other~~
93 ~~suitable reproductions of the records, upon such reasonable~~
94 ~~terms as shall be imposed to assure that the records will not be~~
95 ~~damaged, destroyed, or altered.~~

96 ~~(2) This section does not apply to records maintained at~~
97 ~~any licensed facility the primary function of which is to~~
98 ~~provide psychiatric care to its patients, or to records of~~
99 ~~treatment for any mental or emotional condition at any other~~
100 ~~licensed facility which are governed by the provisions of s.~~

101 ~~394.4615.~~

102 ~~(3) This section does not apply to records of substance~~
103 ~~abuse impaired persons, which are governed by s. 397.501.~~

104 ~~(2)-(4)~~ Patient records are confidential and must not be
105 disclosed without the consent of the patient or his or her legal
106 representative, but appropriate disclosure may be made without
107 such consent to:

108 (e) The Department of Health ~~agency~~ upon subpoena issued
109 pursuant to s. 456.071, but the records obtained thereby must be
110 used solely for the purpose of the department ~~agency~~ and the
111 appropriate professional board in its investigation,
112 prosecution, and appeal of disciplinary proceedings. If the
113 department ~~agency~~ requests copies of the records, the facility
114 shall charge no more than its actual copying costs, including
115 reasonable staff time. The records must be sealed and must not
116 be available to the public pursuant to s. 119.07(1) or any other
117 statute providing access to records, nor may they be available
118 to the public as part of the record of investigation for and
119 prosecution in disciplinary proceedings made available to the
120 public by the department ~~agency~~ or the appropriate regulatory
121 board. However, the department ~~agency~~ must make available, upon
122 written request by a practitioner against whom probable cause
123 has been found, any such records that form the basis of the
124 determination of probable cause.

125 ~~(3)-(5)~~ The Department of Health may examine patient

126 records of a licensed facility, whether held by the facility or
127 the Agency for Health Care Administration, for the purpose of
128 epidemiological investigations. The unauthorized release of
129 information by agents of the department which would identify an
130 individual patient is a misdemeanor of the first degree,
131 punishable as provided in s. 775.082 or s. 775.083.

132 (4)~~(7)~~(a) If the content of any record of patient
133 treatment is provided under this section, the recipient,~~if~~
134 ~~other than the patient or the patient's representative,~~ may use
135 such information only for the purpose provided and may not
136 further disclose any information to any other person or entity,
137 unless expressly permitted by the written consent of the
138 patient. A general authorization for the release of medical
139 information is not sufficient for this purpose. The content of
140 such patient treatment record is confidential and exempt from
141 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
142 Constitution.

143 (5)~~(8)~~ Patient records at hospitals and ambulatory
144 surgical centers are exempt from disclosure under s. 119.07(1),
145 except as provided by subsections (2) and (3) ~~(1)~~~~(5)~~.

146 Section 3. Paragraphs (a) through (j) of subsection (7) of
147 section 397.501, Florida Statutes, are redesignated as
148 paragraphs (c) through (l), respectively, and new paragraphs (a)
149 and (b) are added to that subsection, to read:

150 397.501 Rights of individuals.—Individuals receiving

151 substance abuse services from any service provider are
152 guaranteed protection of the rights specified in this section,
153 unless otherwise expressly provided, and service providers must
154 ensure the protection of such rights.

155 (7) RIGHT TO ACCESS AND CONFIDENTIALITY OF INDIVIDUAL
156 RECORDS.—

157 (a) Within 14 working days after receiving a written
158 request from an individual or an individual's legal
159 representative, a service provider shall furnish a true and
160 correct copy of all records in the possession of the service
161 provider. A service provider may furnish the requested records
162 in paper form or, upon request, in an electronic format. A
163 service provider who maintains an electronic health record
164 system shall furnish the requested records in the manner chosen
165 by the requester which must include electronic format, access
166 through a web-based patient portal, or submission through a
167 patient's electronic personal health record. For the purpose of
168 this section, the term "legal representative" has the same
169 meaning as provided in s. 408.833.

170 (b) Within 10 working days after receiving such a request
171 from an individual or an individual's legal representative, a
172 service provider shall provide access to examine the original
173 records in its possession, or microforms or other suitable
174 reproductions of the records. A service provider may impose any
175 reasonable terms necessary to ensure that the records will not

176 | be damaged, destroyed, or altered.

177 | Section 4. Subsection (1) of section 400.145, Florida
178 | Statutes, is amended to read:

179 | 400.145 Copies of records of care and treatment of
180 | resident.—

181 | (1) Upon receipt of a written request that complies with
182 | the federal Health Insurance Portability and Accountability Act
183 | of 1996 (HIPAA) and this section, a nursing home facility shall
184 | furnish to a competent resident, or to a representative of that
185 | resident who is authorized to make requests for the resident's
186 | records under HIPAA or subsection (2), copies of the resident's
187 | paper and electronic records that are in possession of the
188 | facility. Such records must include any medical records and
189 | records concerning the care and treatment of the resident
190 | performed by the facility, except for progress notes and
191 | consultation report sections of a psychiatric nature. The
192 | facility shall provide a resident with access to the requested
193 | records within 24 hours, excluding weekends and holidays, and
194 | provide copies of the requested records within 2 ~~14~~ working days
195 | after receipt of a request relating to a current resident or
196 | within 30 working days after receipt of a request relating to a
197 | former resident.

198 | Section 5. Section 408.833, Florida Statutes, is created
199 | to read:

200 | 408.833 Client access to medical records.—

201 (1) For the purpose of this section, the term "legal
202 representative" means a client's attorney who has been
203 designated by the client to receive copies of the client's
204 medical, care and treatment, or interdisciplinary records; a
205 legally recognized guardian of the client; a court-appointed
206 representative of the client; or a person designated by the
207 client or by a court of competent jurisdiction to receive copies
208 of the client's medical, care and treatment, or
209 interdisciplinary records.

210 (2) Within 14 working days after receiving a written
211 request from a client or client's legal representative, a
212 provider shall furnish a true and correct copy of all records,
213 including medical, care and treatment, and interdisciplinary
214 records, as applicable, in the possession of the provider. A
215 provider may furnish the requested records in paper form or,
216 upon request, in an electronic format. A provider who maintains
217 an electronic health record system shall furnish the requested
218 records in the manner chosen by the requester which must include
219 electronic format, access through a web-based patient portal, or
220 submission through a patient's electronic personal health
221 record.

222 (3) Within 10 working days after receiving a request from
223 a client or client's legal representative, a provider shall
224 provide access to examine the original records in its
225 possession, or microforms or other suitable reproductions of the

226 records. A provider may impose any reasonable terms necessary to
227 ensure that the records will not be damaged, destroyed, or
228 altered.

229 (4) This section does not apply to:

230 (a) Records maintained at any licensed facility, as
231 defined in s. 395.002, the primary function of which is to
232 provide psychiatric care to its patients, or to records of
233 treatment for any mental or emotional condition at any other
234 licensed facility which are governed by s. 394.4615;

235 (b) Records of substance abuse impaired persons which are
236 governed by s. 397.501; or

237 (c) Requests for records of a resident of a nursing home
238 facility.

239 Section 6. Subsection (6) of section 456.057, Florida
240 Statutes, is amended to read:

241 456.057 Ownership and control of patient records; report
242 or copies of records to be furnished; disclosure of
243 information.—

244 (6) (a) Any health care practitioner licensed by the
245 department or a board within the department who makes a physical
246 or mental examination of, or administers treatment or dispenses
247 legend drugs to, any person shall, upon request of such person
248 or the person's legal representative, furnish, within 14 working
249 days after such request ~~in a timely manner, without delays for~~
250 legal review, copies of all reports and records relating to such

251 examination or treatment, including X-rays ~~X-rays~~ and insurance
252 information. A health care practitioner may furnish the
253 requested reports and records in paper form or, upon request, in
254 an electronic format. A health care practitioner who maintains
255 an electronic health record system shall furnish the requested
256 reports and records in the manner chosen by the requester which
257 must include electronic format, access through a web-based
258 patient portal, or submission through a patient's electronic
259 personal health record. For the purpose of this section, the
260 term "legal representative" means a patient's attorney who has
261 been designated by the patient to receive copies of the
262 patient's medical records, a legally recognized guardian of the
263 patient, a court-appointed representative of the patient, or any
264 other person designated by the patient or by a court of
265 competent jurisdiction to receive copies of the patient's
266 medical records.

267 (b) Within 10 working days after receiving a written
268 request by a patient or a patient's legal representative, a
269 healthcare practitioner must provide access to examine the
270 original reports and records, or microforms or other suitable
271 reproductions of the reports and records in the healthcare
272 practitioner's possession. The healthcare practitioner may
273 impose any reasonable terms necessary to ensure that the reports
274 and records will not be damaged, destroyed, or altered.

275 (c) ~~However,~~ When a patient's psychiatric, chapter 490

276 | psychological, or chapter 491 psychotherapeutic records are
277 | requested by the patient or the patient's legal representative,
278 | the health care practitioner may provide a report of examination
279 | and treatment in lieu of copies of records. Upon a patient's
280 | written request, complete copies of the patient's psychiatric
281 | records shall be provided directly to a subsequent treating
282 | psychiatrist. The furnishing of such report or copies may ~~shall~~
283 | not be conditioned upon payment of a fee for services rendered.

284 | Section 7. Paragraph (f) of subsection (1) of section
285 | 316.1932, Florida Statutes, is amended to read:

286 | 316.1932 Tests for alcohol, chemical substances, or
287 | controlled substances; implied consent; refusal.—

288 | (1)

289 | (f)1. The tests determining the weight of alcohol in the
290 | defendant's blood or breath shall be administered at the request
291 | of a law enforcement officer substantially in accordance with
292 | rules of the Department of Law Enforcement. Such rules must
293 | specify precisely the test or tests that are approved by the
294 | Department of Law Enforcement for reliability of result and ease
295 | of administration, and must provide an approved method of
296 | administration which must be followed in all such tests given
297 | under this section. However, the failure of a law enforcement
298 | officer to request the withdrawal of blood does not affect the
299 | admissibility of a test of blood withdrawn for medical purposes.

300 | 2.a. Only a physician, certified paramedic, registered

301 nurse, licensed practical nurse, other personnel authorized by a
302 hospital to draw blood, or duly licensed clinical laboratory
303 director, supervisor, technologist, or technician, acting at the
304 request of a law enforcement officer, may withdraw blood for the
305 purpose of determining its alcoholic content or the presence of
306 chemical substances or controlled substances therein. However,
307 the failure of a law enforcement officer to request the
308 withdrawal of blood does not affect the admissibility of a test
309 of blood withdrawn for medical purposes.

310 b. Notwithstanding any provision of law pertaining to the
311 confidentiality of hospital records or other medical records, if
312 a health care provider, who is providing medical care in a
313 health care facility to a person injured in a motor vehicle
314 crash, becomes aware, as a result of any blood test performed in
315 the course of that medical treatment, that the person's blood-
316 alcohol level meets or exceeds the blood-alcohol level specified
317 in s. 316.193(1)(b), the health care provider may notify any law
318 enforcement officer or law enforcement agency. Any such notice
319 must be given within a reasonable time after the health care
320 provider receives the test result. Any such notice shall be used
321 only for the purpose of providing the law enforcement officer
322 with reasonable cause to request the withdrawal of a blood
323 sample pursuant to this section.

324 c. The notice shall consist only of the name of the person
325 being treated, the name of the person who drew the blood, the

326 blood-alcohol level indicated by the test, and the date and time
327 of the administration of the test.

328 d. Nothing contained in s. 395.3025(2) ~~s. 395.3025(4)~~, s.
329 456.057, or any applicable practice act affects the authority to
330 provide notice under this section, and the health care provider
331 is not considered to have breached any duty owed to the person
332 under s. 395.3025(2) ~~s. 395.3025(4)~~, s. 456.057, or any
333 applicable practice act by providing notice or failing to
334 provide notice. It shall not be a breach of any ethical, moral,
335 or legal duty for a health care provider to provide notice or
336 fail to provide notice.

337 e. A civil, criminal, or administrative action may not be
338 brought against any person or health care provider participating
339 in good faith in the provision of notice or failure to provide
340 notice as provided in this section. Any person or health care
341 provider participating in the provision of notice or failure to
342 provide notice as provided in this section shall be immune from
343 any civil or criminal liability and from any professional
344 disciplinary action with respect to the provision of notice or
345 failure to provide notice under this section. Any such
346 participant has the same immunity with respect to participating
347 in any judicial proceedings resulting from the notice or failure
348 to provide notice.

349 3. The person tested may, at his or her own expense, have
350 a physician, registered nurse, other personnel authorized by a

351 hospital to draw blood, or duly licensed clinical laboratory
352 director, supervisor, technologist, or technician, or other
353 person of his or her own choosing administer an independent test
354 in addition to the test administered at the direction of the law
355 enforcement officer for the purpose of determining the amount of
356 alcohol in the person's blood or breath or the presence of
357 chemical substances or controlled substances at the time
358 alleged, as shown by chemical analysis of his or her blood or
359 urine, or by chemical or physical test of his or her breath. The
360 failure or inability to obtain an independent test by a person
361 does not preclude the admissibility in evidence of the test
362 taken at the direction of the law enforcement officer. The law
363 enforcement officer shall not interfere with the person's
364 opportunity to obtain the independent test and shall provide the
365 person with timely telephone access to secure the test, but the
366 burden is on the person to arrange and secure the test at the
367 person's own expense.

368 4. Upon the request of the person tested, full information
369 concerning the results of the test taken at the direction of the
370 law enforcement officer shall be made available to the person or
371 his or her attorney. Full information is limited to the
372 following:

373 a. The type of test administered and the procedures
374 followed.

375 b. The time of the collection of the blood or breath

376 sample analyzed.

377 c. The numerical results of the test indicating the
378 alcohol content of the blood and breath.

379 d. The type and status of any permit issued by the
380 Department of Law Enforcement which was held by the person who
381 performed the test.

382 e. If the test was administered by means of a breath
383 testing instrument, the date of performance of the most recent
384 required inspection of such instrument.

385

386 Full information does not include manuals, schematics, or
387 software of the instrument used to test the person or any other
388 material that is not in the actual possession of the state.
389 Additionally, full information does not include information in
390 the possession of the manufacturer of the test instrument.

391 5. A hospital, clinical laboratory, medical clinic, or
392 similar medical institution or physician, certified paramedic,
393 registered nurse, licensed practical nurse, other personnel
394 authorized by a hospital to draw blood, or duly licensed
395 clinical laboratory director, supervisor, technologist, or
396 technician, or other person assisting a law enforcement officer
397 does not incur any civil or criminal liability as a result of
398 the withdrawal or analysis of a blood or urine specimen, or the
399 chemical or physical test of a person's breath pursuant to
400 accepted medical standards when requested by a law enforcement

401 officer, regardless of whether or not the subject resisted
402 administration of the test.

403 Section 8. Paragraph (a) of subsection (2) of section
404 316.1933, Florida Statutes, is amended to read:

405 316.1933 Blood test for impairment or intoxication in
406 cases of death or serious bodily injury; right to use reasonable
407 force.—

408 (2) (a) Only a physician, certified paramedic, registered
409 nurse, licensed practical nurse, other personnel authorized by a
410 hospital to draw blood, or duly licensed clinical laboratory
411 director, supervisor, technologist, or technician, acting at the
412 request of a law enforcement officer, may withdraw blood for the
413 purpose of determining the alcoholic content thereof or the
414 presence of chemical substances or controlled substances
415 therein. However, the failure of a law enforcement officer to
416 request the withdrawal of blood shall not affect the
417 admissibility of a test of blood withdrawn for medical purposes.

418 1. Notwithstanding any provision of law pertaining to the
419 confidentiality of hospital records or other medical records, if
420 a health care provider, who is providing medical care in a
421 health care facility to a person injured in a motor vehicle
422 crash, becomes aware, as a result of any blood test performed in
423 the course of that medical treatment, that the person's blood-
424 alcohol level meets or exceeds the blood-alcohol level specified
425 in s. 316.193(1)(b), the health care provider may notify any law

426 enforcement officer or law enforcement agency. Any such notice
 427 must be given within a reasonable time after the health care
 428 provider receives the test result. Any such notice shall be used
 429 only for the purpose of providing the law enforcement officer
 430 with reasonable cause to request the withdrawal of a blood
 431 sample pursuant to this section.

432 2. The notice shall consist only of the name of the person
 433 being treated, the name of the person who drew the blood, the
 434 blood-alcohol level indicated by the test, and the date and time
 435 of the administration of the test.

436 3. Nothing contained in s. 395.3025(2) ~~s. 395.3025(4)~~, s.
 437 456.057, or any applicable practice act affects the authority to
 438 provide notice under this section, and the health care provider
 439 is not considered to have breached any duty owed to the person
 440 under s. 395.3025(2) ~~s. 395.3025(4)~~, s. 456.057, or any
 441 applicable practice act by providing notice or failing to
 442 provide notice. It shall not be a breach of any ethical, moral,
 443 or legal duty for a health care provider to provide notice or
 444 fail to provide notice.

445 4. A civil, criminal, or administrative action may not be
 446 brought against any person or health care provider participating
 447 in good faith in the provision of notice or failure to provide
 448 notice as provided in this section. Any person or health care
 449 provider participating in the provision of notice or failure to
 450 provide notice as provided in this section shall be immune from

451 any civil or criminal liability and from any professional
452 disciplinary action with respect to the provision of notice or
453 failure to provide notice under this section. Any such
454 participant has the same immunity with respect to participating
455 in any judicial proceedings resulting from the notice or failure
456 to provide notice.

457 Section 9. Subsection (13) of section 395.4025, Florida
458 Statutes, is amended to read:

459 395.4025 Trauma centers; selection; quality assurance;
460 records.—

461 (13) Patient care, transport, or treatment records or
462 reports, or patient care quality assurance proceedings, records,
463 or reports obtained or made pursuant to this section, s.
464 395.3025(2)(f) ~~s. 395.3025(4)(f)~~, s. 395.401, s. 395.4015, s.
465 395.402, s. 395.403, s. 395.404, s. 395.4045, s. 395.405, s.
466 395.50, or s. 395.51 must be held confidential by the department
467 or its agent and are exempt from the provisions of s. 119.07(1).
468 Patient care quality assurance proceedings, records, or reports
469 obtained or made pursuant to these sections are not subject to
470 discovery or introduction into evidence in any civil or
471 administrative action.

472 Section 10. Subsection (1) of section 429.294, Florida
473 Statutes, is amended to read:

474 429.294 Availability of facility records for investigation
475 of resident's rights violations and defenses; penalty.—

476 (1) Failure to provide complete copies of a resident's
477 records, including, but not limited to, all medical records and
478 the resident's chart, within the control or possession of the
479 facility in accordance with s. 408.833 ~~400.145~~, shall constitute
480 evidence of failure of that party to comply with good faith
481 discovery requirements and shall waive the good faith
482 certificate and presuit notice requirements under this part by
483 the requesting party.

484 Section 11. Subsection (4) of section 440.185, Florida
485 Statutes, is amended to read:

486 440.185 Notice of injury or death; reports; penalties for
487 violations.—

488 (4) Additional reports with respect to such injury and of
489 the condition of such employee, including copies of medical
490 reports, funeral expenses, and wage statements, shall be filed
491 by the employer or carrier to the department at such times and
492 in such manner as the department may prescribe by rule. In
493 carrying out its responsibilities under this chapter, the
494 department or agency may by rule provide for the obtaining of
495 any medical records relating to medical treatment provided
496 pursuant to this chapter, notwithstanding the provisions of ss.
497 90.503 and 395.3025(2) ~~395.3025(4)~~.

498 Section 12. This act shall take effect July 1, 2019.