

By Senator Lee

20-01747A-20

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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.; defining the term "legal
24 representative"; requiring a provider to furnish and
25 provide access to records within a specified timeframe
26 after receiving a request from a client or the
27 client's legal representative; requiring that certain
28 providers furnish such records in the manner chosen by
29 the requester; authorizing a provider to impose

20-01747A-20

20201882__

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

45
46 Be It Enacted by the Legislature of the State of Florida:

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

52 394.4615 Clinical records; confidentiality.—

53 (3) Within 14 working days after receiving a request made
54 in accordance with paragraphs (2) (a)-(c), a service provider
55 must furnish clinical records in its possession. A service
56 provider may furnish the requested records in paper form or,
57 upon request, in an electronic format. A service provider who
58 maintains an electronic health record system shall furnish the

20-01747A-20

20201882__

59 requested records in the manner chosen by the requester which
60 must include electronic format, access through a web-based
61 patient portal, or submission through a patient's electronic
62 personal health record.

63 Section 2. Subsections (4) through (11) of section
64 395.3025, Florida Statutes, are renumbered as subsections (2)
65 through (9), respectively, and subsections (1), (2), and (3),
66 paragraph (e) of present subsection (4), paragraph (a) of
67 present subsection (7), and present subsection (8) of that
68 section, are amended to read:

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

71 ~~(1) Any licensed facility shall, upon written request, and~~
72 ~~only after discharge of the patient, furnish, in a timely~~
73 ~~manner, without delays for legal review, to any person admitted~~
74 ~~therein for care and treatment or treated thereat, or to any~~
75 ~~such person's guardian, curator, or personal representative, or~~
76 ~~in the absence of one of those persons, to the next of kin of a~~
77 ~~decedent or the parent of a minor, or to anyone designated by~~
78 ~~such person in writing, a true and correct copy of all patient~~
79 ~~records, including X rays, and insurance information concerning~~
80 ~~such person, which records are in the possession of the licensed~~
81 ~~facility, provided the person requesting such records agrees to~~
82 ~~pay a charge.~~ The exclusive charge for copies of patient records
83 may include sales tax and actual postage, and, except for
84 nonpaper records that are subject to a charge not to exceed \$2,
85 may not exceed \$1 per page. A fee of up to \$1 may be charged for
86 each year of records requested. These charges shall apply to all
87 records furnished, whether directly from the facility or from a

20-01747A-20

20201882__

88 copy service providing these services on behalf of the facility.
89 However, a patient whose records are copied or searched for the
90 purpose of continuing to receive medical care is not required to
91 pay a charge for copying or for the search. ~~The licensed~~
92 ~~facility shall further allow any such person to examine the~~
93 ~~original records in its possession, or microforms or other~~
94 ~~suitable reproductions of the records, upon such reasonable~~
95 ~~terms as shall be imposed to assure that the records will not be~~
96 ~~damaged, destroyed, or altered.~~

97 ~~(2) This section does not apply to records maintained at~~
98 ~~any licensed facility the primary function of which is to~~
99 ~~provide psychiatric care to its patients, or to records of~~
100 ~~treatment for any mental or emotional condition at any other~~
101 ~~licensed facility which are governed by the provisions of s.~~
102 ~~394.4615.~~

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

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

109 (e) The Department of Health ~~agency~~ upon subpoena issued
110 pursuant to s. 456.071, but the records obtained thereby must be
111 used solely for the purpose of the department ~~agency~~ and the
112 appropriate professional board in its investigation,
113 prosecution, and appeal of disciplinary proceedings. If the
114 department ~~agency~~ requests copies of the records, the facility
115 shall charge no more than its actual copying costs, including
116 reasonable staff time. The records must be sealed and must not

20-01747A-20

20201882__

117 be available to the public pursuant to s. 119.07(1) or any other
118 statute providing access to records, nor may they be available
119 to the public as part of the record of investigation for and
120 prosecution in disciplinary proceedings made available to the
121 public by the department ~~agency~~ or the appropriate regulatory
122 board. However, the department ~~agency~~ must make available, upon
123 written request by a practitioner against whom probable cause
124 has been found, any such records that form the basis of the
125 determination of probable cause.

126 (5)~~(7)~~ (a) If the content of any record of patient treatment
127 is provided under this section, the recipient, ~~if other than the~~
128 ~~patient or the patient's representative,~~ may use such
129 information only for the purpose provided and may not further
130 disclose any information to any other person or entity, unless
131 expressly permitted by the written consent of the patient. A
132 general authorization for the release of medical information is
133 not sufficient for this purpose. The content of such patient
134 treatment record is confidential and exempt from the provisions
135 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

136 (6)~~(8)~~ Patient records at hospitals and ambulatory surgical
137 centers are exempt from disclosure under s. 119.07(1), except as
138 provided by subsections (2) and (3) ~~(1)-(5)~~.

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

143 397.501 Rights of individuals.—Individuals receiving
144 substance abuse services from any service provider are
145 guaranteed protection of the rights specified in this section,

20-01747A-20

20201882__

146 unless otherwise expressly provided, and service providers must
147 ensure the protection of such rights.

148 (7) RIGHT TO ACCESS AND CONFIDENTIALITY OF INDIVIDUAL
149 RECORDS.—

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

163 (b) Within 10 working days after receiving such a request
164 from an individual or an individual's legal representative, a
165 service provider shall provide access to examine the original
166 records in its possession, or microforms or other suitable
167 reproductions of the records. A service provider may impose any
168 reasonable terms necessary to ensure that the records will not
169 be damaged, destroyed, or altered.

170 Section 4. Subsection (1) of section 400.145, Florida
171 Statutes, is amended to read:

172 400.145 Copies of records of care and treatment of
173 resident.—

174 (1) Upon receipt of a written request that complies with

20-01747A-20

20201882__

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

191 Section 5. Section 408.833, Florida Statutes, is created to
192 read:

193 408.833 Client access to medical records.-

194 (1) For the purpose of this section, the term "legal
195 representative" means an attorney who has been designated by a
196 client to receive copies of the client's medical, care and
197 treatment, or interdisciplinary records; a legally recognized
198 guardian of the client; a court-appointed representative of the
199 client; or a person designated by the client or by a court of
200 competent jurisdiction to receive copies of the client's
201 medical, care and treatment, or interdisciplinary records.

202 (2) Within 14 working days after receiving a written
203 request from a client or client's legal representative, a

20-01747A-20

20201882__

204 provider shall furnish a true and correct copy of all records,
205 including medical, care and treatment, and interdisciplinary
206 records, as applicable, in the possession of the provider. A
207 provider may furnish the requested records in paper form or,
208 upon request, in an electronic format. A provider who maintains
209 an electronic health record system shall furnish the requested
210 records in the manner chosen by the requester which must include
211 electronic format, access through a web-based patient portal, or
212 submission through a patient's electronic personal health
213 record.

214 (3) Within 10 working days after receiving a request from a
215 client or a client's legal representative, a provider shall
216 provide access to examine the original records in its
217 possession, or microforms or other suitable reproductions of the
218 records. A provider may impose any reasonable terms necessary to
219 ensure that the records will not be damaged, destroyed, or
220 altered.

221 (4) This section does not apply to:

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

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

229 (c) Records of a resident of a nursing home facility.

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

232 456.057 Ownership and control of patient records; report or

20-01747A-20

20201882__

233 copies of records to be furnished; disclosure of information.-

234 (6) (a) Any health care practitioner licensed by the
235 department or a board within the department who makes a physical
236 or mental examination of, or administers treatment or dispenses
237 legend drugs to, any patient person shall, upon request of such
238 patient person or the patient's person's legal representative,
239 furnish, within 14 working days after such request in a timely
240 manner, without delays for legal review, copies of all reports
241 and records relating to such examination or treatment, including
242 X-rays ~~X-rays~~ and insurance information. A health care
243 practitioner may furnish the requested reports and records in
244 paper form or, upon request, in an electronic format. A health
245 care practitioner who maintains an electronic health record
246 system shall furnish the requested reports and records in the
247 manner chosen by the requester which must include electronic
248 format, access through a web-based patient portal, or submission
249 through a patient's electronic personal health record. For the
250 purpose of this section, the term "legal representative" means a
251 patient's attorney who has been designated by the patient to
252 receive copies of the patient's medical records, a legally
253 recognized guardian of the patient, a court-appointed
254 representative of the patient, or any other person designated by
255 the patient or by a court of competent jurisdiction to receive
256 copies of the patient's medical records.

257 (b) Within 10 working days after receiving a written
258 request by a patient or a patient's legal representative, a
259 health care practitioner must provide access to examine the
260 original reports and records, or microforms or other suitable
261 reproductions of the reports and records in the health care

20-01747A-20

20201882__

262 practitioner's possession. The health care practitioner may
263 impose any reasonable terms necessary to ensure that the reports
264 and records will not be damaged, destroyed, or altered.

265 (c) However, When a patient's psychiatric, chapter 490
266 psychological, or chapter 491 psychotherapeutic records are
267 requested by the patient or the patient's legal representative,
268 the health care practitioner may provide a report of examination
269 and treatment in lieu of copies of records. Upon a patient's
270 written request, complete copies of the patient's psychiatric
271 records shall be provided directly to a subsequent treating
272 psychiatrist. The furnishing of such report or copies may shall
273 not be conditioned upon payment of a fee for services rendered.

274 Section 7. Paragraph (f) of subsection (1) of section
275 316.1932, Florida Statutes, is amended to read:

276 316.1932 Tests for alcohol, chemical substances, or
277 controlled substances; implied consent; refusal.—

278 (1)

279 (f)1. The tests determining the weight of alcohol in the
280 defendant's blood or breath shall be administered at the request
281 of a law enforcement officer substantially in accordance with
282 rules of the Department of Law Enforcement. Such rules must
283 specify precisely the test or tests that are approved by the
284 Department of Law Enforcement for reliability of result and ease
285 of administration, and must provide an approved method of
286 administration which must be followed in all such tests given
287 under this section. However, the failure of a law enforcement
288 officer to request the withdrawal of blood does not affect the
289 admissibility of a test of blood withdrawn for medical purposes.

290 2.a. Only a physician, certified paramedic, registered

20-01747A-20

20201882__

291 nurse, licensed practical nurse, other personnel authorized by a
292 hospital to draw blood, or duly licensed clinical laboratory
293 director, supervisor, technologist, or technician, acting at the
294 request of a law enforcement officer, may withdraw blood for the
295 purpose of determining its alcoholic content or the presence of
296 chemical substances or controlled substances therein. However,
297 the failure of a law enforcement officer to request the
298 withdrawal of blood does not affect the admissibility of a test
299 of blood withdrawn for medical purposes.

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

314 c. The notice shall consist only of the name of the person
315 being treated, the name of the person who drew the blood, the
316 blood-alcohol level indicated by the test, and the date and time
317 of the administration of the test.

318 d. Nothing contained in s. 395.3025(2) ~~s. 395.3025(4)~~, s.
319 456.057, or any applicable practice act affects the authority to

20-01747A-20

20201882__

320 provide notice under this section, and the health care provider
321 is not considered to have breached any duty owed to the person
322 under s. 395.3025(2) ~~s. 395.3025(4)~~, s. 456.057, or any
323 applicable practice act by providing notice or failing to
324 provide notice. It shall not be a breach of any ethical, moral,
325 or legal duty for a health care provider to provide notice or
326 fail to provide notice.

327 e. A civil, criminal, or administrative action may not be
328 brought against any person or health care provider participating
329 in good faith in the provision of notice or failure to provide
330 notice as provided in this section. Any person or health care
331 provider participating in the provision of notice or failure to
332 provide notice as provided in this section shall be immune from
333 any civil or criminal liability and from any professional
334 disciplinary action with respect to the provision of notice or
335 failure to provide notice under this section. Any such
336 participant has the same immunity with respect to participating
337 in any judicial proceedings resulting from the notice or failure
338 to provide notice.

339 3. The person tested may, at his or her own expense, have a
340 physician, registered nurse, other personnel authorized by a
341 hospital to draw blood, or duly licensed clinical laboratory
342 director, supervisor, technologist, or technician, or other
343 person of his or her own choosing administer an independent test
344 in addition to the test administered at the direction of the law
345 enforcement officer for the purpose of determining the amount of
346 alcohol in the person's blood or breath or the presence of
347 chemical substances or controlled substances at the time
348 alleged, as shown by chemical analysis of his or her blood or

20-01747A-20

20201882__

349 urine, or by chemical or physical test of his or her breath. The
350 failure or inability to obtain an independent test by a person
351 does not preclude the admissibility in evidence of the test
352 taken at the direction of the law enforcement officer. The law
353 enforcement officer shall not interfere with the person's
354 opportunity to obtain the independent test and shall provide the
355 person with timely telephone access to secure the test, but the
356 burden is on the person to arrange and secure the test at the
357 person's own expense.

358 4. Upon the request of the person tested, full information
359 concerning the results of the test taken at the direction of the
360 law enforcement officer shall be made available to the person or
361 his or her attorney. Full information is limited to the
362 following:

363 a. The type of test administered and the procedures
364 followed.

365 b. The time of the collection of the blood or breath sample
366 analyzed.

367 c. The numerical results of the test indicating the alcohol
368 content of the blood and breath.

369 d. The type and status of any permit issued by the
370 Department of Law Enforcement which was held by the person who
371 performed the test.

372 e. If the test was administered by means of a breath
373 testing instrument, the date of performance of the most recent
374 required inspection of such instrument.

375

376 Full information does not include manuals, schematics, or
377 software of the instrument used to test the person or any other

20-01747A-20

20201882__

378 material that is not in the actual possession of the state.
379 Additionally, full information does not include information in
380 the possession of the manufacturer of the test instrument.

381 5. A hospital, clinical laboratory, medical clinic, or
382 similar medical institution or physician, certified paramedic,
383 registered nurse, licensed practical nurse, other personnel
384 authorized by a hospital to draw blood, or duly licensed
385 clinical laboratory director, supervisor, technologist, or
386 technician, or other person assisting a law enforcement officer
387 does not incur any civil or criminal liability as a result of
388 the withdrawal or analysis of a blood or urine specimen, or the
389 chemical or physical test of a person's breath pursuant to
390 accepted medical standards when requested by a law enforcement
391 officer, regardless of whether or not the subject resisted
392 administration of the test.

393 Section 8. Paragraph (a) of subsection (2) of section
394 316.1933, Florida Statutes, is amended to read:

395 316.1933 Blood test for impairment or intoxication in cases
396 of death or serious bodily injury; right to use reasonable
397 force.—

398 (2) (a) Only a physician, certified paramedic, registered
399 nurse, licensed practical nurse, other personnel authorized by a
400 hospital to draw blood, or duly licensed clinical laboratory
401 director, supervisor, technologist, or technician, acting at the
402 request of a law enforcement officer, may withdraw blood for the
403 purpose of determining the alcoholic content thereof or the
404 presence of chemical substances or controlled substances
405 therein. However, the failure of a law enforcement officer to
406 request the withdrawal of blood shall not affect the

20-01747A-20

20201882__

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

408 1. Notwithstanding any provision of law pertaining to the
409 confidentiality of hospital records or other medical records, if
410 a health care provider, who is providing medical care in a
411 health care facility to a person injured in a motor vehicle
412 crash, becomes aware, as a result of any blood test performed in
413 the course of that medical treatment, that the person's blood-
414 alcohol level meets or exceeds the blood-alcohol level specified
415 in s. 316.193(1)(b), the health care provider may notify any law
416 enforcement officer or law enforcement agency. Any such notice
417 must be given within a reasonable time after the health care
418 provider receives the test result. Any such notice shall be used
419 only for the purpose of providing the law enforcement officer
420 with reasonable cause to request the withdrawal of a blood
421 sample pursuant to this section.

422 2. The notice shall consist only of the name of the person
423 being treated, the name of the person who drew the blood, the
424 blood-alcohol level indicated by the test, and the date and time
425 of the administration of the test.

426 3. Nothing contained in s. 395.3025(2) ~~s. 395.3025(4)~~, s.
427 456.057, or any applicable practice act affects the authority to
428 provide notice under this section, and the health care provider
429 is not considered to have breached any duty owed to the person
430 under s. 395.3025(2) ~~s. 395.3025(4)~~, s. 456.057, or any
431 applicable practice act by providing notice or failing to
432 provide notice. It shall not be a breach of any ethical, moral,
433 or legal duty for a health care provider to provide notice or
434 fail to provide notice.

435 4. A civil, criminal, or administrative action may not be

20-01747A-20

20201882__

436 brought against any person or health care provider participating
437 in good faith in the provision of notice or failure to provide
438 notice as provided in this section. Any person or health care
439 provider participating in the provision of notice or failure to
440 provide notice as provided in this section shall be immune from
441 any civil or criminal liability and from any professional
442 disciplinary action with respect to the provision of notice or
443 failure to provide notice under this section. Any such
444 participant has the same immunity with respect to participating
445 in any judicial proceedings resulting from the notice or failure
446 to provide notice.

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

449 395.4025 Trauma centers; selection; quality assurance;
450 records.—

451 (13) Patient care, transport, or treatment records or
452 reports, or patient care quality assurance proceedings, records,
453 or reports obtained or made pursuant to this section, s.
454 395.3025(2)(f) ~~s. 395.3025(4)(f)~~, s. 395.401, s. 395.4015, s.
455 395.402, s. 395.403, s. 395.404, s. 395.4045, s. 395.405, s.
456 395.50, or s. 395.51 must be held confidential by the department
457 or its agent and are exempt from the provisions of s. 119.07(1).
458 Patient care quality assurance proceedings, records, or reports
459 obtained or made pursuant to these sections are not subject to
460 discovery or introduction into evidence in any civil or
461 administrative action.

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

464 429.294 Availability of facility records for investigation

20-01747A-20

20201882__

465 of resident's rights violations and defenses; penalty.-

466 (1) Failure to provide complete copies of a resident's
467 records, including, but not limited to, all medical records and
468 the resident's chart, within the control or possession of the
469 facility in accordance with s. 408.833 ~~s. 400.145~~, shall
470 constitute evidence of failure of that party to comply with good
471 faith discovery requirements and shall waive the good faith
472 certificate and presuit notice requirements under this part by
473 the requesting party.

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

476 440.185 Notice of injury or death; reports; penalties for
477 violations.-

478 (4) Additional reports with respect to such injury and of
479 the condition of such employee, including copies of medical
480 reports, funeral expenses, and wage statements, shall be filed
481 by the employer or carrier to the department at such times and
482 in such manner as the department may prescribe by rule. In
483 carrying out its responsibilities under this chapter, the
484 department or agency may by rule provide for the obtaining of
485 any medical records relating to medical treatment provided
486 pursuant to this chapter, notwithstanding the provisions of ss.
487 90.503 and 395.3025(2) ~~395.3025(4)~~.

488 Section 12. This act shall take effect July 1, 2020.