The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL:	CS/SB 1606
INTRODUCER:	Health Policy Committee and Senator Grall
SUBJECT:	Patient Access to Records
DATE:	April 3, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	**Fav/CS**
2.			AHS	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Under current Florida law, hospitals, ambulatory surgical centers, and health care practitioners are required to provide requested patient health records to patients, residents, and their legal representatives in a "timely" manner. In the absence of a specific statutory deadline, the federal Health Insurance Portability and Accountability Act (HIPAA) standard of 30 calendar days applies. For electronic health information, the federal Information Blocking Rule also generally applies, requiring access without unreasonable delay.

CS/SB 1606 standardizes the timeframe for responding to patient records requests for patients, residents, and their legal representatives. The bill amends various sections of the Florida Statutes to require health care providers and practitioners to furnish requested records within 14 working days of a request. Providers and practitioners who maintain electronic health record systems must deliver the records in the format chosen by the requester, including, but not limited to, an electronic format, submission through a patient's electronic personal health record, or access through a web-based patient portal if the service provider maintains a patient portal.

In addition, the bill requires providers and practitioners to allow access for the inspection of original records, or suitable reproductions such as microforms, within 10 working days of receiving a request. Providers may impose reasonable conditions to protect the integrity of the records.

The bill creates s. 408.833, F.S., to establish uniform record access and delivery standards for clients of health care providers (including facilities) that are licensed, registered, or certified by the Agency for Health Care Administration (AHCA), that are not otherwise addressed in specific statutory provisions. These standards are also applied to licensed health care practitioners regulated by the Department of Health (DOH), as well as to mental health service providers and substance abuse treatment providers.

Florida law currently requires nursing homes to provide requested records within 14 working days. The bill revises this requirement to align with federal Medicare and Medicaid Conditions of Participation, mandating that inspection be allowed within 24 hours (excluding weekends and holidays) and copies be furnished within two working days of the request.

The bill provides an effective date of January 1, 2026.

II. Present Situation:

Federal Right of Access to Records Under HIPAA

The federal Health Insurance Portability and Accountability Act (HIPAA) establishes national standards for the protection of individually identifiable health information. The HIPAA Privacy Rule[1], implements these protections and sets forth the individual right of access to medical records.[2] The U.S. Department of Health and Human Services' Office for Civil Rights (OCR) is responsible for implementing and enforcing the HIPAA Privacy Rule.[3]

Under the Privacy Rule, individuals have the right to inspect or obtain a copy of their *protected health information* (PHI) maintained by a *covered entity*. Covered entities include:

- Health care providers who transmit health information electronically in connection with certain administrative transactions,
- Health plans such as insurers and health maintenance organizations (HMOs), and
- Health care clearinghouses.[4]

Most licensed health care providers and health care practitioners in Florida qualify as covered entities under these definitions. Business associates of covered entities, such as third-party billing companies or cloud storage providers, must also comply with HIPAA's access provisions when they handle protected health information on behalf of the covered entity.[5]

The Privacy Rule requires covered entities to provide access to PHI contained in what is known as a *designated record set*. A designated record set is defined[6] as a group of records maintained by or for a covered entity that is used, in whole or in part, to make decisions about individuals. These records include:

[1] 45 C.F.R. Part 160 and Subparts A and E of Part 164.
[2] 45 C.F.R. § 164.524.
[3] U.S. Department of Health and Human Services, Office for Civil Rights, *Summary of the HIPAA Privacy Rule, available at:* https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html (last visited Mar. 22, 2025).
[4] 45 C.F.R. § 160.103.
[5] 45 C.F.R. §§ 160.103, 164.502(e).
[6] 45 C.F.R. § 164.501.

- Medical and billing records maintained by or for a health care provider,
- Enrollment, payment, claims adjudication, and case or medical management records maintained by or for a health plan, and
- Any other records used to make decisions about the individual. [7]

Records not used to make treatment or coverage decisions—such as peer review files or internal administrative documents—are not considered to be included in the designated record set.

The Privacy Rule requires covered entities to respond to a request for access within *30 calendar days*.[8] One 30-day extension is permitted if the individual is notified in writing of the delay and the expected response date.[9] If PHI is maintained electronically, and the individual requests an electronic copy, the entity must provide it in the requested form and format if it is readily producible.[10]

Covered entities may charge only a *reasonable, cost-based fee* for access. This fee may include the cost of labor for copying, supplies, and postage, if applicable, but may not include retrieval fees or other administrative charges.[11] In guidance issued by the OCR, covered entities are prohibited from imposing barriers to access, such as requiring patients to submit requests in person or through proprietary forms when such requirements are not necessary.[12]

Interaction of HIPAA with State Law[13]

HIPAA establishes a national baseline for the privacy and security of health information but permits states to enact laws that provide greater protections or access rights. A state law is only preempted by HIPAA if it is contrary to HIPAA—that is, if it is impossible to comply with both the state and federal requirements, or if the state law stands as an obstacle to the full purposes and objectives of HIPAA.

However, if a state law is more protective of patient privacy or provides greater access to health information than HIPAA, it is not preempted and remains enforceable. In practice, this means states may adopt laws that expand individual rights of access, shorten response times, or add safeguards, so long as they do not authorize disclosures or impose barriers that conflict with HIPAA's requirements.

---

[7] *Id.*
[8] The OCR has recently considered reducing this time frame to 15 days in a proposed rule modification, but the rule was not finalized. U.S. Department of Health and Human Services, *Modifications to the HIPAA Privacy Rule to Support, and Remove Barriers to, Coordinated Care and Individual Engagement*, 86 Fed. Reg. 6446 (Jan. 21, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-01-21/pdf/2020-27157.pdf.
[9] 45 C.F.R. § 164.524(b)(2).
[10] 45 C.F.R. § 164.524(c)(2).
[11] 45 C.F.R. § 164.524(c)(4).
[12] U.S. Department of Health and Human Services, Office for Civil Rights, *Individuals' Right under HIPAA to Access their Health Information 45 CFR § 164.524*, *available at*: https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html (last visited Mar. 22, 2025).
[13] U.S. Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, When a state or federal law or regulation (such as the HIPAA Privacy Rule) requires that EHI be released, is it ever information blocking not to release it?, *available at*: https://www.healthit.gov/faq/when-state-or-federal-law-or-regulation-such-hipaa-privacy-rule-requires-ehi-be-released-no (last visited Mar. 22, 2025).

Federal Information Blocking Prohibition

The 21st Century Cures Act[14] prohibits certain actors from engaging in "*information blocking*," which is broadly defined as any practice that is likely to interfere with access, exchange, or use of *electronic health information* (EHI), unless the practice is required by law or covered by a regulatory exception.[15] The Office of the National Coordinator for Health Information Technology (ONC) is responsible for implementing the rule,[16] and the U.S. Department of Health and Human Services Office of Inspector General (OIG) is charged with enforcement.[17]

The federal Information Blocking Rule[18], adopted by ONC in 2020, applies to three categories of actors:

- Health care providers,
- Developers of certified health information technology (health IT), and
- Health information networks or health information exchanges.[19]

Most licensed health care providers and health care practitioners in Florida fall within the rule's definition of a "health care provider."[20]

The rule prohibits these actors from engaging in practices that are "likely to interfere" with access, exchange, or use of EHI, unless one of eight specified exceptions applies.[21] EHI is defined to include all electronic protected health information (ePHI) that would be part of a designated record set under HIPAA.[22] Examples of information blocking may include imposing unnecessary delays, refusing to provide records in electronic format, charging unreasonable fees, or using technology in a way that restricts access or interoperability.

Unlike HIPAA, which allows covered entities to respond to access requests within 30 calendar days, the Information Blocking Rule requires that access to EHI be provided *without unreasonable delay*, subject to specified exceptions where the EHI is protected.[23] These include exceptions for preventing harm, protecting privacy, ensuring security, managing infeasible requests, maintaining health IT performance, complying with licensing restrictions, and limiting the manner of access.[24]

---

[14] Pub. L. No. 114-255.
[15] 42 U.S.C. § 300jj-52.
[16] U.S. Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, *Information Blocking Overview*, *available at:* https://www.healthit.gov/topic/information-blocking (last visited Mar. 22, 2025).
[17] U.S. Department of Health and Human Services, Office of Inspector General, *Information Blocking Enforcement*, *available at*: https://oig.hhs.gov/reports/featured/information-blocking/ (last visited Mar. 22, 2025).
[18] 45 C.F.R. Part 171.
[19] 45 C.F.R. § 171.102.
[20] "Health care provider" for purposes of the Information Blocking Rule has the same meaning as "health care provider" in 42 U.S.C. § 300jj.
[21] 45 C.F.R. § 171.103.
[22] *See* 45 C.F.R. § 171.102, referencing 45 C.F.R. § 164.501.
[23] 45 C.F.R. §§ 171.200–171.303.
[24] *Id.*

Enforcement of the Information Blocking Rule is governed by 42 U.S.C. § 300jj-52(b). OIG may impose civil monetary penalties of up to $1 million per violation on health IT developers and health information networks or exchanges. While ONC and OIG have finalized enforcement regulations for non-provider actors, enforcement policies for health care providers are still forthcoming as of early 2025.

Interaction of the Information Blocking Rule with State Law

The federal law preempts state law only to the extent of a direct conflict.

> *"The information blocking provisions of the Cures Act establish a floor for permissible practices and do not preempt State laws that are more stringent."*
> — 85 Fed. Reg. 25810 (May 1, 2020).

The Information Blocking Rule does not prohibit state laws that impose stricter or faster access obligations but does preempt state laws that would require or permit practices that interfere with access to EHI in ways that federal law would otherwise prohibit.

The ONC has clarified that compliance with state law is not a defense to information blocking if the delay or interference is not required by the state law. This is central to understanding how federal and state requirements interact:

> *"The fact that an actor covered by the information blocking regulations meets its obligations under another law applicable to them or its circumstances (such as the maximum allowed time an actor has under that law to respond to a patient's request) will not automatically demonstrate that the actor's practice does not implicate the information blocking definition."*
> — ONC Information Blocking FAQ.[25]

This means that a state statute may impose a 14-day deadline, but if a provider routinely waits 14 days to respond when it could have provided access sooner, that practice may still constitute information blocking.

Due to the many provider types affected by changes made by the bill, pertinent background information regarding Florida law is provided within the Effect of Proposed Changes section of this analysis for the reader's convenience.

[25] U.S. Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, *When a state or federal law or regulation (such as the HIPAA Privacy Rule) requires that EHI be released, is it ever information blocking not to release it?, available at*: https://www.healthit.gov/faq/when-state-or-federal-law-or-regulation-such-hipaa-privacy-rule-requires-ehi-be-released-no (last visited Mar. 22, 2025).

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 394.4615, F.S., to require a **mental health service provider**[26] to furnish copies of clinical records[27] within 14 working days of receiving a request, if:

- The patient or the patient's guardian[28] or legal custodian authorizes the release;
- The patient is represented by counsel and the records are needed by the patient's counsel for adequate representation; or
- The court orders the release.

Under the bill, a service provider may furnish the requested clinical records in paper form or, upon request, in an electronic format. If the service provider maintains an electronic health record system, the service provider must furnish the clinical records in the format chosen by the requester, including, but not limited to, an electronic format, submission through a patient's electronic personal health record, or access through a web-based patient portal if the service provider maintains a patient portal.

Section 2 of the bill amends s. 395.3025, F.S., to remove the requirement that **licensed hospitals and ambulatory surgical centers** timely provide patient records only after a patient's discharge, thereby aligning state law with federal access rights under HIPAA.

Section 2 also changes the term "agency" (as in the Agency for Health Care Administration) to "Department of Health" and "department" to clarify[29] and correct[30] that the DOH has the authority to issue subpoenas for patient records from entities regulated under ch. 395, F.S., for the purposes of investigating a health care practitioner.

To conform to changes made by the bill this section also deletes language requiring a licensed hospital or ambulatory surgical center to allow a person to examine original records in its possession, or microforms or other suitable reproductions of the records. The requirements in the deleted text would instead be applied to licensed hospitals and ambulatory surgical centers in s. 408.833, F.S., as created in section 5 of the bill, on lines 215-221.

As a federal condition of a hospital's participation in Medicare or Medicaid, a hospital must provide access to requested patient records "within a reasonable time frame" and to "seek to

---

[26] "Service provider" means a receiving facility, a facility licensed under ch. 397, F.S., a treatment facility, an entity under contract with the Department of Children and Families to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced practice registered nurse, a psychiatric nurse, or a qualified professional as defined in s. 39.01, F.S. Section 394.455(45), F.S.

[27] "Clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by facility staff which pertains to the patient's hospitalization or treatment. Section 394.455(6), F.S.

[28] "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated. Section 394.455(18), F.S.

[29] Department of Health, Senate Bill 1606 Legislative Analysis (Mar. 20, 2025) (on file with the Senate Committee on Health Policy).

[30] Agency for Health Care Administration, Senate Bill 1606 Legislative Analysis (Mar. 19, 2025) (on file with the Senate Committee on Health Policy).

fulfill requests as quickly as their recordkeeping system permits."[31] This requirement exists in conjunction with Florida law and would continue to apply under the bill.

Section 3 of the bill amends s. 397.501, F.S., to require **substance abuse service providers** to furnish copies of records within 14 working days after receiving a *written* request from an individual or the individual's legal representative.[32]

If the service provider maintains an electronic health record system, the service provider must furnish the requested records in the format chosen by the requester, including, but not limited to, an electronic format, submission through a patient's electronic personal health record, or access through a web-based patient portal if the service provider maintains a patient portal.

The service provider must, within 10 working days after receiving such a written request from an individual or his or her legal representative, provide access to examine the original records in the service provider's possession, or microforms, or other suitable reproductions of the records. The service provider may impose any reasonable terms necessary to ensure that the records will not be damaged, destroyed, or altered.

Section 4 of the bill amends s. 400.145, F.S., to revise the timeframe within which **nursing home facilities** must provide access to and copies of resident records upon written request.[33] Current law requires a nursing home facility to provide the requested records within 14 working days after receiving a written request relating to current resident. Under the bill, for current residents, access must be provided within 24 hours (excluding weekends and holidays), and copies must be provided within two working days, of receipt of the written request. This change would align Florida law with federal law for nursing home facilities that receive Medicare or Medicaid funding.[34]

For former residents, copies must be provided within 30 working days. The bill does not make changes to the timeline for requests from former residents.

Section 5 of the bill creates s. 408.833, F.S., within the Health Care Licensing Procedures Act[35] to establish uniform standards for record access by clients[36] of **health care providers**,[37]

---

[31] *See* 42 CFR § 482.24(b)(3) and 42 C.F.R. § 482.13(d)(2).
[32] For purposes of this section, the term "legal representative" has the same meaning as in s. 408.833(1), F.S., as created in section 5 of the bill.
[33] Note that access to assisted living facility resident records is also governed by this section in current law. *See* changes made to s. 429.294, F.S., in section 11 of the bill.
[34] 42 C.F.R. § 483.10(g)(2)(ii) requires Medicare- or Medicaid-certified long-term care facilities to provide residents or their legal representatives the opportunity to inspect all records, including clinical records, within 24 hours (excluding weekends and holidays) of an oral or written request.
[35] Chapter 408, Part II, F.S. *See also* s. 408.801(1), F.S.
[36] "Client" means any person receiving services from a provider listed in s. 408.802. Section 408.803(6), F.S.
[37] The Act applies to all of the following facilities: 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

including facilities, that are licensed, registered, or certified by the AHCA and not otherwise addressed in statute. Records maintained by psychiatric hospitals, substance abuse treatment providers, or nursing homes are exempt from this section pursuant to subsection (4).

The section defines the term "legal representative" as an attorney who has been designated by a client to receive copies of the client's medical, care and treatment, or interdisciplinary records; a legally recognized guardian of the client; a court-appointed representative of the client; or a person designated by the client or by a court of competent jurisdiction to receive copies of the client's medical, care and treatment, or interdisciplinary records.

The bill requires providers to furnish records within 14 working days after receiving a *written* request from a client or his or her legal representative. A provider must furnish *all* records in the provider's possession, including, but not limited to: medical, care and treatment, and interdisciplinary records.

A provider may furnish the requested records in paper form or, upon request, in an electronic format. If the health care practitioner maintains an electronic health record system, the service provider must furnish the requested records in the format chosen by the requester, including, but not limited to, an electronic format, submission through a patient's electronic personal health record, or access through a web-based patient portal if the service provider maintains a patient portal.

The health care provider must, within 10 working days after receiving a request from an individual or his or her legal representative, provide access to examine the original records in the service provider's possession, or microforms, or other suitable reproductions of the records. The health care provider may impose any reasonable terms necessary to ensure that the records will not be damaged, destroyed, or altered.

A **hospice** would be required to follow this section of law. However, pursuant to s. 400.611(4), F.S., a hospice may not release a patient's interdisciplinary record or any portion of it, unless the person requesting the information provides a patient authorization or other satisfactory documentation in compliance with that section.

Section 6 of the bill amends s. 456.057, F.S., to require **any health care practitioner**[38] licensed by the DOH who is not exempt under subsection (2)[39] to furnish copies of requested records

developmental disabilities; health care services pools; health care clinics; and organ, tissue, and eye procurement organizations. Section 408.802, F.S. *See also* s. 408.803(12), F.S.

[38] Acupuncturists; allopathic physicians, physician assistants, anesthesiologist assistants, and medical assistants; osteopathic physicians, physician assistants, and anesthesiologist assistants; chiropractic physicians and physician assistants; podiatric physicians; naturopathic physicians; optometrists; autonomous advanced practice registered nurses, advanced practice registered nurses, registered nurses, licensed practical nurses, and certified nursing assistants; pharmacists, pharmacy interns, and pharmacy technicians; dentists, dental hygienists, and dental laboratories; midwives; speech and language pathologists; audiologists; occupational therapists and occupational therapy assistants; respiratory therapists; dieticians and nutritionists; athletic trainers; orthotists, prosthetists, and pedorthists; electrologists; massage therapists; clinical laboratory personnel; medical physicists; genetic counselors; opticians; hearing aid specialists; physical therapists; psychologists and school psychologists; and clinical social workers, mental health counselors, and marriage and family therapists.

[39] The following persons are not included for purposes of that section: certified nursing assistants, pharmacists and pharmacies, dental hygienists, nursing home administrators, respiratory therapists, athletic trainers, electrologists, clinical

within 14 working days after the request is received, rather than "in a timely manner, without delays for legal review" as written in current law. This creates a specific timeframe in which health care practitioners must remit the requested records to the patient or his or her legal representative.

For health care practitioners, records include any report or record relating to examination or treatment of the patient.

If the health care practitioner maintains an electronic health record system, the service provider must furnish the requested records in the format chosen by the requester, including, but not limited to, an electronic format, submission through a patient's electronic personal health record, or access through a web-based patient portal if the service provider maintains a patient portal.

The bill creates a definition for the term "legal representative" that is similar to the definition created for health care providers earlier in the bill. Under the bill and for this section, "legal representative" means a *patient's* attorney who has been designated by the patient to receive copies of the patient's medical records, a legally recognized guardian of the patient, a court-appointed representative of the patient, or any other person designated by the patient or by a court of competent jurisdiction to receive copies of the patient's medical records.

The health care practitioner provider must, within 10 working days after receiving a *written* request from an individual or his or her legal representative, provide access to examine the original records in the service provider's possession, or microforms, or other suitable reproductions of the records. The health care practitioner may impose any reasonable terms necessary to ensure that the records will not be damaged, destroyed, or altered.

Sections 7, 8, 9, 11, and 12 of the bill amend ss. 316.1932, 316.1933, 395.4025, 440.185, and 456.47, F.S., respectively to revise cross-references to conform to the renumbering of subsections within s. 395.3025, F.S., in section 2 of the bill.

Section 10 of the bill amends s. 429.294, F.S., to conform a cross-reference to changes made in the bill so that access to assisted living facility resident records is governed by s. 408.833, F.S., as created in section 5 of the bill, rather than s. 400.145, F.S.

Section 13 of the bill provides an effective date of January 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

laboratory personnel, medical physicists, opticians and optical establishments, and persons or entities practicing under s. 627.736(7), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

While a 14-day deadline for responding to records requests is not in conflict with the federal Information Blocking Rule, compliance with that statutory deadline alone may not be enough to shield a provider from liability under federal law if a delay is otherwise unreasonable.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 152 and 204 respectively require that substance abuse service providers and health care providers furnish a true and correct copy of all records in the possession of the provider rather than a true and correct copy of all *requested* records in the possession of the provider. If this is unintended, an amendment should be considered to add the word "requested" before "records."

The bill also requires health care providers, health care practitioners, mental health service providers, and substance abuse service providers that maintain an electronic health record system to furnish clinical records in a format chosen by the requester, including, but not limited to, an electronic format, submission through a patient's electronic personal health record, or access through a web-based patient portal if the service provider maintains a patient portal. If a requester chooses an abstract electronic format that is contrary to the file format in which the provider or practitioner maintains the files, and which cannot easily be converted into the requested electronic format, this formatting requirement may be unnecessarily burdensome on the provider or practitioner.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.4615, 395.3025, 397.501, 400.145, 456.057, 316.1932, 316.1933, 395.4025, 429.294, 440.185, and 456.47.

This bill creates section 408.833 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 25, 2025:
The CS revises the requirement for health care providers and practitioners furnishing records pursuant to a request in the manner chosen by the requester. Under the CS, this includes, but is not limited to, an electronic format, submission through a patient's electronic personal health record, or access through a web-based patient portal if the provider maintains a patient portal. This clarifies that providers and practitioners that do not maintain a patient portal are not required to implement a patient portal to comply with the requirements of the bill.

The CS deletes a cross-reference within s. 400.0234, F.S., which was mistakenly included in the underlying bill. The CS also changes the effective date of the bill from July 1, 2025, to January 1, 2026.

B. Amendments:

None.