

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

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

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

144 397.501 Rights of individuals.—Individuals receiving
 145 substance abuse services from any service provider are
 146 guaranteed protection of the rights specified in this section,
 147 unless otherwise expressly provided, and service providers must
 148 ensure the protection of such rights.

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

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

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

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

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

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

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

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

194 | 408.833 Client access to medical records.-

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

201 competent jurisdiction to receive copies of the client's
202 medical, care and treatment, or interdisciplinary records.

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

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

222 (4) This section does not apply to:

223 (a) Records maintained at a licensed facility, as defined
224 in s. 395.002, the primary function of which is to provide
225 psychiatric care to its patients, or to records of treatment for

226 any mental or emotional condition at any other licensed facility
227 which are governed by s. 394.4615;

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

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

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

233 456.057 Ownership and control of patient records; report
234 or copies of records to be furnished; disclosure of
235 information.—

236 (6) (a) Any health care practitioner licensed by the
237 department or a board within the department who makes a physical
238 or mental examination of, or administers treatment or dispenses
239 legend drugs to, any patient person shall, upon request of such
240 patient person or the patient's person's legal representative,
241 furnish, within 14 working days after such request ~~in a timely~~
242 ~~manner, without delays for legal review,~~ copies of all reports
243 and records relating to such examination or treatment, including
244 X-rays ~~X-rays~~ and insurance information. A health care
245 practitioner may furnish the requested reports and records in
246 paper form or, upon request, in an electronic format. A health
247 care practitioner who maintains an electronic health record
248 system shall furnish the requested reports and records in the
249 manner chosen by the requester which must include electronic
250 format, access through a web-based patient portal, or submission

251 through a patient's electronic personal health record. For the
252 purpose of this section, the term "legal representative" means a
253 patient's attorney who has been designated by the patient to
254 receive copies of the patient's medical records, a legally
255 recognized guardian of the patient, a court-appointed
256 representative of the patient, or any other person designated by
257 the patient or by a court of competent jurisdiction to receive
258 copies of the patient's medical records.

259 (b) Within 10 working days after receiving a written
260 request by a patient or a patient's legal representative, a
261 healthcare practitioner must provide access to examine the
262 original reports and records, or microforms or other suitable
263 reproductions of the reports and records in the healthcare
264 practitioner's possession. The healthcare practitioner may
265 impose any reasonable terms necessary to ensure that the reports
266 and records will not be damaged, destroyed, or altered.

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

276 Section 7. Paragraph (f) of subsection (1) of section
 277 316.1932, Florida Statutes, is amended to read:

278 316.1932 Tests for alcohol, chemical substances, or
 279 controlled substances; implied consent; refusal.—

280 (1)

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

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

301 of blood withdrawn for medical purposes.

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

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

320 d. Nothing contained in s. 395.3025(2) ~~s. 395.3025(4)~~, s.
321 456.057, or any applicable practice act affects the authority to
322 provide notice under this section, and the health care provider
323 is not considered to have breached any duty owed to the person
324 under s. 395.3025(2) ~~s. 395.3025(4)~~, s. 456.057, or any
325 applicable practice act by providing notice or failing to

326 provide notice. It shall not be a breach of any ethical, moral,
327 or legal duty for a health care provider to provide notice or
328 fail to provide notice.

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

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

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

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

365 a. The type of test administered and the procedures
366 followed.

367 b. The time of the collection of the blood or breath
368 sample analyzed.

369 c. The numerical results of the test indicating the
370 alcohol content of the blood and breath.

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

374 e. If the test was administered by means of a breath
375 testing instrument, the date of performance of the most recent

376 required inspection of such instrument.

377

378 Full information does not include manuals, schematics, or
379 software of the instrument used to test the person or any other
380 material that is not in the actual possession of the state.
381 Additionally, full information does not include information in
382 the possession of the manufacturer of the test instrument.

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

395 Section 8. Paragraph (a) of subsection (2) of section
396 316.1933, Florida Statutes, is amended to read:

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

400 (2) (a) Only a physician, certified paramedic, registered

401 nurse, licensed practical nurse, other personnel authorized by a
402 hospital to draw blood, or duly licensed clinical laboratory
403 director, supervisor, technologist, or technician, acting at the
404 request of a law enforcement officer, may withdraw blood for the
405 purpose of determining the alcoholic content thereof or the
406 presence of chemical substances or controlled substances
407 therein. However, the failure of a law enforcement officer to
408 request the withdrawal of blood shall not affect the
409 admissibility of a test of blood withdrawn for medical purposes.

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

424 2. The notice shall consist only of the name of the person
425 being treated, the name of the person who drew the blood, the

426 | blood-alcohol level indicated by the test, and the date and time
427 | of the administration of the test.

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

437 | 4. A civil, criminal, or administrative action may not be
438 | brought against any person or health care provider participating
439 | in good faith in the provision of notice or failure to provide
440 | notice as provided in this section. Any person or health care
441 | provider participating in the provision of notice or failure to
442 | provide notice as provided in this section shall be immune from
443 | any civil or criminal liability and from any professional
444 | disciplinary action with respect to the provision of notice or
445 | failure to provide notice under this section. Any such
446 | participant has the same immunity with respect to participating
447 | in any judicial proceedings resulting from the notice or failure
448 | to provide notice.

449 | Section 9. Subsection (13) of section 395.4025, Florida
450 | Statutes, is amended to read:

451 395.4025 Trauma centers; selection; quality assurance;
 452 records.—

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

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

466 429.294 Availability of facility records for investigation
 467 of resident's rights violations and defenses; penalty.—

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

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

478 440.185 Notice of injury or death; reports; penalties for
479 violations.—

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

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