

HIPAA Requirements and Florida Law:

Disclosures of Protected Health Information
for Law Enforcement Purposes _____



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Introduction

Hospitals and health systems are responsible for protecting the privacy of their patients and the confidentiality of patient information. Hospitals also have a responsibility to work with law enforcement in conducting legal activities. This guide is intended to assist hospitals and law enforcement officials in working together, particularly in the area of release of patient information. NOTE: Other rules governing patient notification, such as in the instance of a breach, should be considered in all hospital responses.

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandated regulations that govern privacy standards for health care information. The HIPAA privacy rule, effective April 2003, specifies the purposes for which protected health information may and may not be released without authorization from the patient. An individual's right to the privacy of information about themselves is not absolute. It does not, for instance, prevent law enforcement from getting information when due process has been observed.

Protected health information is defined by HIPAA as "individually identifiable health information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse and (2) relates to the past, present, or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual." Virtually all hospitals are covered entities under HIPAA and must adhere to the federal regulations.

In addition, a number of Florida laws also govern release of patient information. A challenge for health care providers is reconciling HIPAA requirements with those of state law. In some cases, a use or disclosure that is allowed under HIPAA is not permitted under more stringent Florida law. A HIPAA standard that is contrary to a provision of state law preempts the state provision except if one or more of the following apply:

- A determination is made by the Secretary of the U.S. Department of Health and Human Services that the state provision is necessary for preventing fraud and abuse in a health care payment system, or for certain other compelling reasons;
- The state law restricts a use or disclosure that is otherwise permitted by HIPAA;
- The state law provides greater privacy protections to individuals;
- The state law provides to individuals a greater right of access to their protected health information;
- The state law provides a greater right to individuals to amend or correct their protected health information;

- The state law increases the privacy protections afforded by a legal permission given by an individual for the use or disclosure of health information;
- The state law provides for the reporting of child abuse, births, and deaths, or for the conduct of public health activities; or
- The state law relates to health plan oversight. (45 C.F.R. Part 160 Subpart B)

HIPAA permits covered entities to disclose protected health information to law enforcement officials, without the individual's written authorization, under specific situations addressed in this guide. Except when required by law, the disclosures addressed in this guide are subject to a "minimum necessary" determination by the covered entity. When reasonable to do so, the covered entity may rely upon the representations of the law enforcement official as to what information is the minimum necessary for their lawful purposes.

Responding appropriately and effectively to law enforcement inquiries can be challenging for health professionals. On the one hand, health professionals are legally and ethically bound to protect patient privacy and other civil rights of patients, such as providing access to protective services. On the other hand, health professionals must themselves comply with the law and avoid obstructing lawful investigations by law enforcement officials and the prosecution of persons who commit crimes. The following tips can help health care workers fulfill their ethical and legal responsibilities when responding to law enforcement inquiries:

- Identify the law enforcement official making the inquiry by examining credentials and documenting the official's name, badge number, and the agency that the official represents;
- Determine the authority under which the official is making the request; this can be in the form of a written statement on agency letterhead, or an oral statement if a written statement is impracticable;
- If the request is oral, ask that the inquiry be formalized in writing, preferably in the form of a warrant, court order or subpoena or investigative demand letter issued by the agency;
- Consult the facility's privacy officer, risk manager, or legal counsel;
- Determine if the request can be satisfied by providing de-identified information; and
- Disclose only the minimum necessary to meet the objective of the request, such as by limiting the information provided to location and identity.

This guide addresses hospital obligations that arise as a result of both state and federal laws. The information is provided as a guide for both hospitals and law enforcement officials. This document provides a discussion of the laws followed by discussion of some scenarios that may be helpful. Hospitals are encouraged to consult with legal counsel before finalizing a policy

on the release of patient information. Staff should make decisions concerning the release of patient information based on hospital policies and/or consultation with their local privacy officer.

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HIPAA and Florida Law

1. Responding to public officials in cases of a bioterrorism threat or other public health emergency

HIPAA

Covered entities may disclose protected health information, without the individual's authorization, to a public health authority acting as authorized by law in response to a bioterrorism threat or public health emergency. The Privacy Rule also permits a covered entity to disclose protected health information to public officials who are reasonably able to prevent or lessen a serious and imminent threat to public health or safety related to bioterrorism. (45 C.F.R. §164.512(b) and (j))

Florida Law

Hospitals may not disclose patient records except as expressly permitted by Fla. Stat. §395.3025, or as otherwise required or allowed by law.

The Department of Health may examine patient records of a licensed facility, whether held at the facility or by the Agency for Health Care Administration, for the purpose of epidemiological investigations. (Fla. Stat. §395.3025(5))

The Agency for Health Care Administration is authorized to require submission by health care facilities of data necessary to carry out its duties. (Fla. Stat. §408.061)

Hospitals are required by law to immediately report the existence of a disease of public health significance to the Department of Health. (Fla. Stat. §381.0031) The State Health Officer is responsible for declaring public health emergencies and issuing public health advisories. (Fla. Stat. §381.00315)

Discussion

Hospitals should first report suspected bioterrorism or a public health emergency to the appropriate public health officials. Reports to law enforcement should be limited to patient identity and location information during the course of the emergency, unless otherwise authorized by a public health official. Once the emergency concludes, disclosure requires patient consent or must otherwise follow HIPAA and state law.

2. Reporting related to incidents of suspected abuse, neglect, or domestic violence

HIPAA

Hospitals and other covered entities may disclose protected health information to public health authorities or other appropriate government authorities authorized by law to receive reports of child abuse or neglect. In addition, HIPAA allows covered entities to report protected

health information to specified authorities in abuse situations other than those involving child abuse and neglect. (45 C.F.R. §164.512(b)(1)(ii)) The final rule allows covered entities to disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence. The rule allows such disclosures to any governmental authority authorized by law to receive reports of such abuse, neglect, or domestic violence. Such disclosures can be made (1) if required by law and the disclosure complies with and is limited to the relevant requirements of such law and the individual is informed of the report; (2) if the individual has agreed to the disclosure; or (3) without the individual's agreement if the disclosure is expressly *authorized by statute or regulation* and either (i) the covered entity, in the exercise of its professional judgment, believes that the disclosure is necessary to prevent serious harm to the individual or to other potential victims; or (ii) if the individual is unable to agree due to incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information is not intended to be used against the individual, and that an immediate enforcement activity that depends on the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure. (45 C.F.R. §164.512(c)(1)(iii)(B))

Florida Law

A person, excluding the immediate family of the offender or victim, who observes the commission of the crime of sexual battery and has the ability to notify law enforcement who fails to make such notification, is guilty of a misdemeanor. (Fla. Stat. §794.027)

The law requires that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, must report such knowledge or suspicion to the Department of Children and Families Central Abuse Hotline. (Fla. Stat. §39.201(1)) In addition, any person, including physicians, nurses, paramedics, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults, who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited, must immediately report such knowledge or suspicion to the Department of Children and Families Central Abuse Hotline. To the extent possible, the report to Department of Children and Families must contain, but need not be limited to:

- 1) Name, age, race, sex, physical description, and location of each victim alleged to have been abused, neglected, or exploited.
- 2) Names, addresses, and telephone numbers of the victim's family members.
- 3) Name, address, and telephone number of each alleged perpetrator.
- 4) Name, address, and telephone number of the caregiver of the victim, if different from the alleged perpetrator.
- 5) Name, address, and telephone number of the person reporting the alleged abuse, neglect, or exploitation.
- 6) Description of the physical or psychological injuries sustained.
- 7) Actions taken by the reporter, if any, such as notification to the criminal justice agency.

- 8) Any other information available to the reporting person which may establish the cause of the abuse, neglect, or exploitation that occurred. (Fla. Stat. §415.1034(1)-(2))

Sexual abuse of a patient by a member of the hospital workforce must be reported to law enforcement. Any individual who witnessed or who possesses actual knowledge of an act of sexual abuse committed by a member of the hospital workforce is required to notify police, the internal risk manager, and the hospital administrator. (Fla. Stat. §395.0197(10))

Discussion

Hospitals are required to report suspected abuse or neglect of a child or vulnerable adult. Vulnerable adults with the capacity to consent can object to the release of records to the protective investigator. However, the investigator can obtain a court order requiring the release of the records. (Fla. Stat. §415.1045(4)(a)(5)) In the absence of life-threatening injuries, suspected domestic abuse involving a competent adult is not required to be reported. A disclosure of protected health information made in connection with such a report and without the individual's consent could be considered a violation of that person's privacy.

Scenarios

Refer to Scenarios 14 and 17.

3. Reporting of protected health information that is required by law (e.g., gunshot or stab wounds)

HIPAA

Covered entities may disclose protected health information for a law enforcement purpose that is required by law, such as required reporting of certain physical injuries. (45 C.F.R. §164.512(f)(1)(i))

Florida Law

Florida law requires the reporting of gunshot wounds or other life-threatening injuries indicating an act of violence. (Fla. Stat. §790.24) In addition, state law requires the reporting of second- and third-degree burns to the county sheriff if they are believed to be caused by violence or unlawful activity. (Fla. Stat. §877.155)

Scenario

Refer to Scenario 8.

4. Complying with a court order, court-ordered warrant, subpoena, summons, or grand jury subpoena, or responding to an administrative subpoena or investigative demand from a law enforcement official

HIPAA

The rule recognizes that the legal process in obtaining a court order and the secrecy of the grand jury process provides protections of the individual's private information. (45 C.F.R. §164.512(f)(1)(ii)(A)-(B)) Because an administrative request may be made without judicial involvement, the rule requires all administrative requests to include or be accompanied by a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used. (45 C.F.R. §164.512(f)(1)(ii)(C)) A provider must limit the information it provides to the information specifically requested in the court order, subpoena, summons or warrant. (45 C.F.R. §164.512(e)(1)(i))

Florida Law

Patient records have a privileged and confidential status and should not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the patient or their legal representative. (Fla. Stat. §395.3025(4)(d); Fla. Admin. Code R. 59A-3.270(7))

In any civil or criminal action, unless otherwise prohibited by law, patient records may be furnished without written authorization upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking the records. (Fla. Stat. §456.057(5)(a)3)

The clinical record of defendants who are charged with a felony and who have been found to be incompetent to stand trial or who have been acquitted by reason of insanity are confidential and exempt from the Florida public records law unless waived by express and informed consent of the client or client's legal guardian. However, the clinical record may be released without consent to persons authorized by order of court and to client's counsel when needed for adequate representation and to law enforcement agencies, attorney, and judges. (Fla. Stat. §916.107(8))

Florida law guarantees confidentiality protections to clients receiving substance abuse services from any service provider. Records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual client may not be disclosed without the written consent of the client subject to certain exceptions. Client records may be disclosed without client consent upon court order based on application showing good cause for disclosure. (Fla. Stat. §397.501(7))

Readers are also referred to Fla. Stat. §542.28 which defines civil investigative demands, although this is outside the allowed disclosure under Fla. Stat. §395.3025, §394.4615, and §456.057.

Scenarios

Refer to Scenario 12, 26, and 27.

5. Identifying or locating a suspect, fugitive, material witness, or missing person

HIPAA

When not otherwise required by law, HIPAA permits disclosures to law enforcement without individual authorization when necessary to locate a suspect, fugitive, material witness or missing person, but with certain limitations. The covered entity must limit disclosures of protected health information to name and address, date and place of birth, social security number, ABO blood type and rh factor, type of injury, date and time of treatment, date and time of death, and a description of distinguishing physical characteristics, such as facial hair, scars, or tattoos. Other information related to the individual's DNA, dental records, body fluid or tissue typing, samples, or analysis cannot be disclosed under this provision, but may be disclosed in response to a court order, warrant, or written administrative request. Missing persons who do not consent to be listed in the directory shall remain confidential if they do not wish to be found. (45 C.F.R. §164.512(f)(2))

Florida Law

Hospitals may not disclose patient records except as expressly permitted by Fla. Stat. §395.3025, or as otherwise required or allowed by law.

A dentist, upon written consent from the family or next of kin of a missing person, must provide a copy of dental records of the missing person to the law enforcement agency requesting such records. The law enforcement agency then must enter the dental records in the criminal justice information system for the purpose of comparing the records to those unidentified deceased persons. (Fla. Stat. §937.031)

Discussion

A hospital should not disclose information from a patient record unless it is with the consent of the individual that is the subject of the information, or to comply with a court order or subpoena.

A hospital can provide identification and location information to a law enforcement official about an individual listed in the facility's directory, if the official asks for the individual by name and the individual has not opted out of the hospital directory.

Scenarios

Refer to Scenarios 4, 6, 9, 10, 23, and 25.

6. Responding to a request for protected health information about a crime victim

HIPAA

When not otherwise required by law, a covered entity may disclose protected health information to law enforcement in response to a request concerning a victim or suspected victim of a crime. The individual must agree to the disclosure. If the individual is incapacitated and cannot agree, the covered entity may disclose the protected health information if law enforcement officials represent that the protected health information is not intended to be used

against the victim, is needed to determine whether another person broke the law, the investigation would be materially and adversely affected by waiting until the victim could agree, and the covered entity believes in its professional judgment that doing so is in the best interests of the individual whose information is requested. (45 C.F.R. §164.512(f)(3))

Florida Law

Hospitals and health care practitioners are governed by their respective licensing statutes, Fla. Stat. §395.3025(4) in the case of hospitals and Fla. Stat. §456.057 in the case of independent practitioners.

Discussion

Fla. Stat. §395.3025 and Fla. Stat. §456.057 require patient records to be kept confidential and allow disclosure only for the purposes that are expressly permitted.

Neither statute specifically permits disclosures of patient records for law enforcement purposes in the absence of a “subpoena from a court of competent jurisdiction” or when the disclosure is otherwise allowed or required by law. Information from patient records should not be disclosed unless authorization from the individual is obtained.

Scenario

Refer to Scenario 10.

7. Alerting law enforcement, medical examiners, and coroners to deaths

HIPAA

HIPAA explicitly permits covered entities to “disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining cause of death, or other duties authorized by law.” (45 C.F.R. §164.512(g)(1)) In addition, covered entities may alert law enforcement of the death of an individual when there is a suspicion that the death resulted from criminal conduct. (45 C.F.R. §164.512(f)(4))

Florida Law

It is the duty of any person where a death occurs, under the circumstances listed below, who becomes aware of the death to report such death and circumstances to the district medical examiner. (Fla. Stat. §406.12) The applicable circumstances are:

- 1) Result of criminal violence;
- 2) By accident;
- 3) By suicide;
- 4) Suddenly, when in apparent good health;
- 5) Unattended by a practicing physician or other recognized provider;
- 6) In any prison or penal institution;
- 7) In police custody;
- 8) In any suspicious or unusual circumstance;
- 9) By criminal abortion;

- 10) By poison;
- 11) By disease constituting a threat to public health; or
- 12) By disease, injury or toxic agent resulting from employment.
(Fla. Stat. §406.11)

Scenario

Refer to Scenario 21.

8. Reporting a crime that occurred on the covered entity's premises

HIPAA

A covered entity may disclose protected health information that the covered entity believes in good faith constitutes evidence of a crime occurring on its premises. For example, if a person is disruptive and the hospital has asked the person to leave and they refuse, that likely qualifies as trespassing and the police may be called. Similarly, evidence of the crime of drug diversion may include medication records that include protected health information. (45 C.F.R. §164.512(f)(5))

Florida Law

Hospitals may not disclose patient records except as expressly permitted by Fla. Stat. §395.3025, or as otherwise required or allowed by law.

State law guarantees confidentiality protections to clients receiving substance abuse services from any service provider. Records of service providers which pertain to the identity, diagnosis, and prognosis of service provision to any individual client are confidential and may not be disclosed without the written consent of the client subject to certain exceptions. Client records may be disclosed without client consent to law enforcement officers when the communication is directly related to a client's commission of a crime on the premises of the provider or against provider personnel or to a threat to commit such crime and are limited to the circumstances of the incident, including the client status of the individual committing or threatening to commit the crime, the individual's name and address, and the individual's last known whereabouts. (Fla. Stat. §397.501(7))

A person, excluding the immediate family of the offender or victim, who observes the commission of the crime of sexual battery and has the ability to notify law enforcement who fails to make such notification is guilty of a misdemeanor. (Fla. Stat. §794.027)

The Florida Baker Act (Chapter 394, Part I, Florida Statutes), provides that the clinical record of a patient examined or treated at a hospital pursuant to the Baker Act is confidential, subject to limited exceptions. The hospital may release information from the clinical record when a patient has declared an intention to harm other persons. If a patient makes such a declaration, the hospital administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient. (See Fla. Stat. § 394.4615(3)(a)). Clinical records may only be released: (i) if the patient or the patient's guardian (or guardian advocate) authorizes release; (ii) the patient is represented by counsel and counsel

needs the records to provide adequate legal representation; or (iii) a court orders release of the records after finding good cause for the disclosure. (See Fla. Stat. § 394.4615(2)).

Fla. Stat. § 394.4593(5) requires a hospital employee who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct with a patient being treated pursuant to the Baker Act, shall immediately report the incident to the Department of Children and Families central abuse hotline and to the appropriate local law enforcement agency. The employee must also prepare a report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The employee shall deliver the report to the supervisor or program director, who is responsible for providing copies to the department's inspector general. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

Discussion

When reporting crimes committed on the premises, hospitals should not disclose information from patient records without patient consent, unless such disclosure is allowed or required by law. If patient consent cannot be obtained, providing de-identified information may satisfy the request.

Refer to the requirements of Fla. Stat. § 843.06 in the instance of a crime currently occurring on the premises that could endanger other people.

Scenarios

Refer to Scenarios 15, 16, and 20.

9. Responding to an off-site medical emergency, to alert law enforcement about criminal activity

HIPAA

When responding to an off-site medical emergency, a covered entity may disclose information related to the commission of a crime, the location of the crime or any victims, and the identity, description, and location of the perpetrator of the crime. If the medical emergency is a result of abuse, neglect or domestic violence, this HIPAA standard does not apply and any disclosure to law enforcement must be handled as described in #2 above. (45 C.F.R. §164.512(f)(6))

Florida Law

Hospitals may not disclose patient records except as expressly permitted by Fla. Stat. §395.3025, or as otherwise required or allowed by law.

Discussion

When criminal activity is encountered when responding to an off-site emergency, hospital personnel should not disclose information from patient records without patient consent,

unless such disclosure is otherwise allowed or required by law. If a patient is unable or unwilling to consent to the disclosure of patient records, the records should not be disclosed except to comply with a court order or subpoena.

Scenario

Refer to Scenario 28.

10. Responding to requests for information from law enforcement over the telephone

HIPAA

A covered entity may provide the same information to law enforcement over the telephone that they may provide in person provided the hospital either knows the caller or appropriately verifies the identity of the caller. (45 C.F.R. §164.514(h)) If the hospital cannot verify that the caller is a law enforcement official, only information contained in the facility directory may be released, in accordance with 45 C.F.R. §164.510(a).

Florida Law

Hospitals may not disclose patient records except as expressly permitted in Fla. Stat. §395.3025, or as otherwise required or allowed by law.

Discussion

A hospital should not provide information beyond directory information over the telephone unless (1) the person requesting the information is known to the hospital, or (2) the hospital has verified the identity of the person making the request.

Scenarios

Refer to Scenarios 3, 4, 9, and 10.

11. Reporting threats to the health or safety of an individual or the public

HIPAA

A covered entity may use or disclose protected health information if it, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the disclosure is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. (45 C.F.R. §164.512(j)(1)(i))

Florida Law

Hospitals may not disclose patient records except as expressly permitted in Fla. Stat. §395.3025, or as otherwise required or allowed by law.

If a health care provider providing care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of the

medical treatment, that the person's blood-alcohol level meets or exceeds the blood-alcohol level specified in Fla. Stat. §316.193(1)(b), the health care provider may, with no risk of civil, criminal, or administrative action, notify any law enforcement officer/agency within a reasonable time. (Fla. Stat. §316.1933)

The clinical record of defendants who are charged with a felony and who have been found to be incompetent to stand trial or who have been acquitted by reason of insanity are confidential and exempt from the Florida public records law unless waived by express and informed consent of the client or client's legal guardian. However, sufficient information may be released without consent to provide adequate warning to any persons threatened with harm by the client, and to the committing court, the state attorney, and the attorney representing the client. (Fla. Stat. §916.107)

Communications between psychologists and patients are confidential; however, such communication may be disclosed when a clear and immediate probability of physical harm exists to the patient, to other individuals or to society and the psychologist communicates the information only to the potential victim, appropriate family member, or law enforcement or other appropriate authorities. (Fla. Stat. §491.0147)

In addition, communications between a patient and a psychiatrist are confidential and may not be disclosed except under the request of the patient or patient's legal representative. (Fla. Stat. §394.4615(3)(a)) However, the treating psychiatrist may disclose communications to the extent necessary to warn potential victims or alert a law enforcement agency of a serious threat of physical harm. (Fla. Stat. §456.059)

Any physician, person, or agency having knowledge of any licensed driver's or applicant's mental or physical disability to drive or need to obtain or wear a medical identification bracelet is authorized to report such knowledge to the Department of Highway Safety and Motor Vehicles. The report should be made in writing and should include the full name, date of birth, address, and a description of the alleged disability of the driver or applicant. (Fla. Stat. §322.126(2))

Discussion

A hospital should call 911 if an individual poses an immediate threat to the facility's patients or staff. If a patient is behaving in a way that would threaten the health and safety of others, a hospital may call law enforcement if it believes that doing so will prevent or lessen further harm to an individual or the public and that such action is necessary to prevent or lessen a serious and imminent threat to health or safety.

If hospital personnel learn of a serious and imminent threat to the health or safety of a person or the public outside the hospital, they may report the threat to law enforcement. In making the report, they should not disclose information from patient records without patient consent, unless it is in response to a court order or subpoena, and with proper notice to the patient.

Scenarios

Refer to Scenarios 1, 2, 5, 18, 19, and 24.

12. Reporting an individual who has admitted participation in a violent crime

HIPAA

HIPAA allows covered entities to make disclosures of protected health information as a result of a statement made by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim.

Provided that the admission was not made in the course of, or based on the individual's request for, therapy, counseling, or treatment related to the propensity to commit this type of violent act, the covered entity must limit disclosures of protected health information to name and address, date and place of birth, social security number, ABO blood type and rh factor, type of injury, date and time of treatment, date and time of death, and a description of distinguishing characteristics. Other information related to the individual's DNA or DNA analysis, dental records, or tissue typing, samples or analysis of body fluids or tissue cannot be disclosed under this provision, but may be disclosed in response to a court order, warrant, or written administrative request. (45 C.F.R. §164.512(j)(1)(ii)(A), (j)(2)-(3))

Florida Law

Hospitals may not disclose patient records except as expressly permitted by Fla. Stat. §395.3025, or as otherwise required or allowed by law.

Discussion

A hospital may not disclose information from patient records for law enforcement purposes without patient consent, unless it is in response to a court order or subpoena. To the extent the patient records are subject to either Fla. Stat. §394.4615 or Fla. Stat. §397.501, those statutes and not Fla. Stat. §395.3025 determine what may be disclosed to law enforcement.

If hospital personnel learn of a violent crime through a patient's admission, they may report the crime to law enforcement, unless the information was learned during a course of treatment, therapy or counseling to affect the propensity to commit the criminal conduct, or through a request by the individual to initiate or be referred for such treatment, therapy, or counseling. Patient information disclosed to report the criminal act should be limited to identity and location.

Scenarios

Refer to Scenarios 7 and 22.

13. Reporting an individual who appears to have escaped from lawful custody

HIPAA

A covered entity, on its own initiative, may disclose protected health information to law enforcement as necessary for law enforcement to identify or apprehend an individual who has escaped from a correctional institution or from lawful custody. (45 C.F.R. §164.512(j)(1)(ii)(B)) Also, a covered entity may disclose protected health information about an inmate to a correctional institution or other custodial agency if such agency makes certain representations to the covered entity, as described under Discussion. (45 C.F.R. §164.512(k)(5))

Discussion

If hospital personnel learn or have reason to believe that a patient has escaped from a correctional institution or from lawful custody, they may report the identity and location of the patient to law enforcement. Information from patient records should not be disclosed without the patient's consent, unless it is in response to a court order, subpoena, warrant, investigative demand or administrative process, and with proper notice to the patient.

Information from patient records may be released to the correctional institution or custodial law enforcement agency if such agency represents to the hospital that the information is necessary for:

- The provision of health care to the individual;
- The health and safety of such individual or other inmates;
- The health and safety of the officers or employees of, or others at, the correctional institution;
- The health and safety of the individual and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution; and
- The administration and maintenance of the safety, security, and good order of the correctional institution.

Scenario

Refer to Scenario 7.

14. Reporting a suspected perpetrator of a crime when the report is made by the victim who is a member of the covered entity's workforce

HIPAA

A workforce member of a covered entity who is a victim of a crime may disclose protected health information if (1) the information is about the suspected perpetrator, and (2) the information is limited to that necessary to identify the suspected perpetrator.

The information must be limited to name and address, date and place of birth, social security number, ABO blood-type and Rh factor, type of injury, date and time of treatment, date

and time of death, and a description of distinguishing physical characteristics. Other information related to the individual's DNA, dental records, body fluid or tissue typing, samples, or analysis cannot be disclosed under this provision, but may be disclosed in response to a court order, warrant, or written administrative request. (45 C.F.R. §164.512(j)(2))

Florida Law

Hospitals may not disclose patient records except as expressly permitted by Fla. Stat. §395.3025, or as otherwise required or allowed by law.

State law guarantees confidentiality protections to clients receiving substance abuse services from any service provider. Records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual client are confidential and may not be disclosed without the written consent of the client subject to certain exceptions. Client records may be disclosed without client consent to law enforcement officers when the communication is directly related to a client's commission of a crime on the premises of the provider or against provider personnel or to a threat to commit such crime and are limited to the circumstances of the incident, including the client status of the individual committing or threatening to commit the crime, the individual's name and address, and the individual's last known whereabouts. (Fla. Stat. §397.501(7))

Scenario

Refer to Scenario 15.

15. Reporting to federal officials authorized to conduct intelligence and other national security activities

HIPAA

A health care facility may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. §401) (45 C.F.R. §164.512(k)(2)). The hospital may also disclose protected health information to authorized federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. §3056 or to foreign heads of state or other persons authorized by 22 U.S.C. §209(a)(3) or for investigations authorized by 18 U.S.C. §871 and §879. (45 C.F.R. §164.512(k)(3))

When a covered entity discloses protected health information to a public official or person acting on behalf of a public official, the covered entity may rely on the following to verify the person's authority:

- A written statement of the legal authority under which the information is requested, or an oral statement if a written statement would be impracticable; or
- A request made pursuant to a legal process, warrant, subpoena, or other legal process issued by a Grand jury or judicial or administrative tribunal presumed to constitute legal authority.

Florida Law

Hospitals may not disclose patient records except as expressly permitted by Fla. Stat. §395.3025, or as otherwise required or allowed by law.

Discussion

A hospital may disclose protected health information upon verifying the federal official's authority to request the information. When responding to a request from a federal official, hospital personnel should:

- Identify the official(s) making the request, e.g., by examining credentials and obtaining business cards or badge numbers; and
- Obtain an oral or verbal representation of the official's authority to request the information.

16. Responding to a request for protected health information by a correctional institution or a law enforcement official having lawful custody of an inmate or others

HIPAA

A covered entity may disclose the requested protected health information a correctional institution or law enforcement agency having lawful custody of an individual if the agency represents that the information is needed for:

- The provision of health care to such individual;
- The health and safety of such individual or other inmates;
- The health and safety of the officers or employees of, or others at, the correctional institution;
- The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution; and
- The administration and maintenance of the safety, security, and good order of the correctional institution. (45 C.F.R. §164.512(k)(5))

Florida Law

The Florida Mental Health Act provides that the clinical record is to be released when the patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Family Services, and the Department of Corrections requests such records. (Fla. Stat. §394.4615(2); Fla. Admin. Code R. 65E-5.250)

Discussion

Hospitals may treat inmates or others in lawful custody brought to the hospital by correctional facility or law enforcement personnel. In many cases, the correctional facility or law enforcement agency is responsible for the individual's continuing health care, and may or

may not be responsible for the payment of health care provided by the hospital. Correctional facilities generally include a health care component, e.g., an infirmary staffed by nurse and/or independent practitioners.

Scenarios

Refer to Scenarios 13 and 18.

Scenarios

1. A patient comes to the emergency room and needs stitches for a cut on his head. In discussing with the provider how he obtained the cut, the patient reveals he was in a fight in an alley a few blocks away and that the other person involved in the fight was not moving when he left.

The provider may telephone law enforcement and report the information in order to lessen the threat to the other person's health or safety if the person does not obtain medical assistance. If law enforcement requires the patient's assistance in locating the alley, the provider may reveal the name and location of the patient.

Refer to discussion 11.

2. A patient tells her mental health therapist during a session that if her mother ever yells at her again, she will put rat poison in her coffee.

If the provider reasonably believes that the patient is going to poison her mother in the near future, the provider may report the information to law enforcement. If, however, the provider believes that the patient is not seriously threatening the safety or health of the mother, no information may be released.

The provider must use his or her best professional judgment and consider factors such as the current symptoms of the patient, the patient's credibility and history of violent acts, and any known ability or access to the method of harm.

If the mother qualifies as a vulnerable adult and the patient reveals information in the therapy session that gives the provider reasonable cause to believe that the mother has been subject to abuse or neglect, the provider must report the information.

Refer to discussion 11.

3. Law enforcement telephones the hospital and requests information on the condition, prognosis, and discharge date of an individual suspected of burglary.

After verifying that the caller is indeed with law enforcement, the provider must use his or her best professional judgment to determine whether disclosure of this information is necessary to lessen or eliminate an imminent threat to the health and safety of any individual, including staff or other patients.

If the patient has not opted out of the facility directory, location and condition can be given if the officer asks about the patient by name. The fact that the

patient has been discharged can be released, as this reflects the location of the patient, but not the discharge date.

If the patient has opted out of the facility directory or if the officer does not identify the patient by name, no information may be provided.

Refer to discussion 8 and 10.

4. The police department calls the emergency department asking if any patients match the description of a particular woman who is a witness to, and perhaps a suspect in, a car accident.

The provider may not answer the question unless the provider believes the disclosure is necessary to avoid or minimize an imminent danger to the health and safety of the patient or another individual. Even then, the provider may only release the minimum necessary information to minimize the imminent danger.

If the police department has the patient's name, the hospital can provide directory information, including location and a one-word condition describing the patient. If the patient has opted out of the directory, however, the hospital cannot release any information about the patient.

Refer to discussion 5 and 10.

5. An emergency provider subject to the HIPAA regulation responds to a car accident and provides treatment to an individual involved in the accident. The provider smells alcohol on the breath of an individual and wonders if he should advise law enforcement on the scene.

If the suspected intoxicated individual is someone other than the person being treated, the information is not protected health information and the provider may disclose the information. If the suspected intoxicated individual is the person being treated, the provider may disclose the information if the provider believes the disclosure is necessary to avoid or minimize an imminent danger to the health and safety of the patient or another individual.

Refer to discussion 11.

6. While caring for a patient's broken arm, a nurse learns from the patient's companion that the patient is wanted by the police in connection with a recent car theft. The nurse wonders whether steps can be taken to alert law enforcement.

The nurse may take the initiative and alert law enforcement as to the identification or location of the patient only if the nurse has a reasonable belief

that the disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual.

The nurse may respond to an inquiry from law enforcement regarding the patient, using the patient's name, by providing directory information including a one-word condition and location of the patient, if the patient has not opted out of the directory.

Refer to discussion 5

7. During the course of treatment, a patient states that she was involved in a shooting, but was not shot. The treating provider wonders whether law enforcement may be contacted.

If the provider believes in good faith that the disclosure is necessary for law enforcement authorities to identify or apprehend an individual either because of a statement by the patient admitting to participating in a violent crime or where it appears the patient has escaped from a correctional institution, a disclosure is allowed.

Disclosure is limited to situations in which the treating provider has a reasonable belief that the disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, or the disclosure is limited to directory information including a one-word condition and location of the patient, the patient has not opted out of the directory, and law enforcement requests the information by using the patient's name, or the patient was reported by fire, police, sheriff, or other public authority and the information is limited to the name, residence, gender, age, occupation, condition, diagnosis or extent and location of injuries of the patient.

If information is disclosed, the HIPAA privacy regulation limits the disclosure to the minimum necessary information listed above.

Refer to discussion 12 and 13.

8. An emergency physician treating a knife wound learns that the patient was likely the perpetrator of a stabbing and that victims of the stabbing still may be at the location of the crime. The physician wants to contact law enforcement.

Under state law, the provider must notify law enforcement that a patient has presented with potentially life-threatening injuries resulting from an act of violence. Disclosure is allowed when the treating provider has a reasonable belief that the disclosure will avoid or minimize an imminent danger to the

health or safety of the patient or any other individual, so information can be disclosed that other victims may still be at the location of the crime.

Refer to discussion 3.

9. A Sheriff's Deputy accompanies an individual with a life threatening stab wound to a hospital emergency department for treatment. The Sheriff's Office later contacts the hospital regarding the status of the patient. Is it permissible for the hospital to provide information to the police officer?

The hospital may disclose to the police officer the name, address, age, gender, and type of injury of the patient. To disclose further information, another exception must apply. If the patient has not opted out of the facility directory, a one-word description of the patient's condition also may be provided if a request for condition is made with the patient's name.

Refer to discussion 5, 10.

10. Police respond to a car accident. The police direct responding Emergency Medical Services (EMS) units to take the injured individual to the hospital. Police investigating the accident subsequently contact the hospital for information regarding the individuals brought to the hospital by EMS. What can the hospital tell police?

Because the police officers at the scene initiated the transport of patients to the hospital, the hospital may disclose the name, address, age, gender, and type of injury of the patients. In order for the hospital to confirm that the police were involved in initiating the care provided, law enforcement officials should be able to describe the accident involving the patients to the health care provider. The hospital may provide additional information only if another exception applies, for instance, if the injured individual is intoxicated and felt to be a threat to others.

Refer to discussion 5, 6 and 10.

11. Police arrive in the emergency department with a person suspected of a shooting. Police physically remain with the suspect while the suspect is treated. During the course of treatment, the suspect's sweatshirt is removed. Police request the sweatshirt as evidence, because they believe it will assist others in identifying the suspect. Emergency department personnel are unsure of what to do with the sweatshirt.

Police may immediately take the sweatshirt as evidence in the suspected crime. The suspect has physically remained in police control since arriving at the

hospital and during treatment. Therefore, the police can take the item as evidence.

Refer to discussion 16.

12. The same suspect is subsequently taken to surgery. The police officer that had remained with the patient waited in the lobby during the surgery. A bullet is removed during the surgery.

The bullet cannot directly be given to the police officer assigned to the patient because the patient was not in the physical custody of the police officer during the surgery. While the bullet itself is not protected health information, the identity of the person it came from is considered protected health information.

If the hospital receives a warrant for the bullet, the identity of the person it came from may be disclosed. Also in order to protect the chain of custody, the hospital must provide the bullet to law enforcement authorities in a manner that does not disclose the identity of the person from which it came.

Refer to discussion 4.

13. A police officer is bitten by a suspect en route to the jail. The bite breaks the skin.

The officer may request that the suspect be tested and the HIV status of the suspect disclosed to the officer. The officer's legal counsel can assist in obtaining the necessary testing. The officer should not take the suspect directly to a hospital or health care facility to request testing.

Refer to discussion 16.

14. A 45-year old woman is being treated for bruising and contusions. The woman says she fell down the stairs, but the health care provider suspects she may be experiencing physical abuse at home. The woman plans to return home after treatment.

If the woman meets the definition of a vulnerable adult, the provider must disclose protected health information pursuant to state-mandated reporting requirements. If the woman does not qualify as a vulnerable adult, the provider must determine whether another exception is met.

Refer to discussion 2.

15. *While waiting to check in for surgery, a patient shoplifts items from the hospital gift shop.*

The hospital may report the crime. Information should be limited to the circumstances of the incident. It should not be necessary to disclose details of the patient's clinical condition or other protected health information, however.

Refer to discussion 8 and 14.

16. *A nurse in the emergency department discovers a large amount of illegal drugs while she is logging in a patient's belongings. May she contact the police?*

Because possession of the drugs is a crime, the nurse may report the incident to the police. Information should be limited to the circumstances of the incident.

Refer to discussion 8.

17. *An elderly adult patient who receives home care arrives through the emergency department for treatment of pneumonia. In treating the patient, emergency department staff also discovers multiple large bedsores.*

As mandated reporters, emergency department caregivers must immediately make a report if they have reasonable cause to believe this vulnerable adult has been subject to abandonment, abuse, or neglect. A report should be made to the Department of Children and Families Central Abuse Hotline.

Refer to discussion 2.

18. *A female patient three months pregnant is brought to the emergency department with a complaint of abdominal pain. She had been tasered by police while resisting arrest during a traffic incident. The emergency physician orders a toxicology screen among other diagnostic tests. After the exam, the physician advises the arresting officer that the patient's lab results are "significant" and that she should not be tasered again. The patient is released into the arresting officer's custody. The patient later complains that her privacy was violated by the hospital. Is the complaint valid?*

It is appropriate to release the information to the arresting officer if it is needed to provide health care for the individual or for the health and safety of the individual.

Refer to discussion 11 and 16.

19. A patient is brought to the emergency department after expressing suicidal thoughts. The patient is evaluated and involuntarily committed under the Baker Act. The next day, a psychiatrist determines the patient is no longer a suicide risk, and recommends discharge as soon as the patient is medically cleared. Soon after, the patient leaves the hospital against medical advice with an IV still in his arm. Hospital security calls 911 and a police cruiser is dispatched to retrieve the patient who is on foot a few blocks from the hospital. The officers are told the patient is under the Baker Act and needs to be brought back to the hospital. After a series of radio communications between the police and hospital security, it is determined that the report, which is public record, identifies the patient as being “under the Baker Act.” Later the patient complains that the hospital violated his privacy by telling the police officers that he was under the Baker Act. Does the patient have a valid complaint?

If the provider reasonably believed that the patient was in danger, the disclosure to law enforcement would be appropriate. The provider must use his or her best professional judgment and consider the facts such as the current symptoms of the patient, the patient’s credibility and history of violent acts, and any known ability or access to a method of harm.

Refer to discussion 11.

20. It is discovered that several medical records are stolen from the hospital after a retail pharmacist calls to report a suspicious prescription for a controlled substance. After investigation, it is apparent that the records were stolen in order to obtain information to facilitate prescription forgery. What can the hospital tell law enforcement about the contents of the stolen records? Can the patient identifiers be revealed?

While the hospital should report the missing records, the pharmacist, as a covered entity, should report the forged prescription to law enforcement. Absent patient authorization, the hospital cannot report the contents of the stolen records without a court order or subpoena but can report the minimum necessary to aide in the investigation. Incidents of disclosure include:

- To report protected health information to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public.
- To report protected health information that the covered entity in good faith believes to be evidence of a crime that occurred on the premises of the covered entity.
- To alert law enforcement to the death of the individual, when there is a suspicion that death resulted from criminal conduct.
- When responding to an off-site medical emergency, as necessary to alert law enforcement to criminal activity.
- To report protected health information to law enforcement when required by law to do so (such as reporting gunshots or stab wounds).

- To comply with a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or an administrative request from a law enforcement official (the administrative request must include a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used).
- To respond to a request for protected health information for purposes of identifying or locating a suspect, fugitive, material witness or missing person, but the information must be limited to basic demographic and health information about the person.
- To respond to a request for protected health information about an adult victim of a crime when the victim agrees (or in limited circumstances if the individual is unable to agree). Child abuse or neglect may be reported, without a parent's agreement, to any law enforcement official authorized by law to receive such reports.

Refer to discussion 8.

21. A deceased patient's information is being requested by the County coroner/medical examiner so that the County coroner/medical examiner can approve the burial due to the fact that no family members can be located or family members do not have the ability to pay for the burial.

A deceased patient's information can be released so the County coroner/medical examiner can perform their authorized duties, if limited to the minimum amount necessary.

Refer to discussion 7.

22. A sexual predator comes to the facility for treatment. Law enforcement has requested to be notified when a sexual predator seeks treatment. Can they be notified?

Unless the sexual predator gives the facility permission to notify law enforcement, law enforcement cannot be notified purely on the basis that the sexual predator is seeking treatment. If the sexual predator admits to a new crime or is an immediate and imminent threat to the health and safety of individuals, then law enforcement can be notified.

Refer to discussion 12.

23. Law enforcement presents at the hospital wanting to take a picture of a tattoo on a patient's body. The patient could possibly be a suspect in a crime, and a witness had mentioned that they saw a tattoo on the alleged perpetrator. Can the picture be taken? Is patient authorization necessary?

Under HIPAA, the provider is allowed to disclose a description of distinguishing physical characteristics of an individual, such as facial hair, scars, or tattoos, in order to locate a suspect. Patient authorization is not required. Only with a warrant can law enforcement take the picture.

Refer to discussion 5.

24. An undocumented alien, female of minor age, presents to the emergency department and it is determined that she has been held in sexual slavery. Can this be reported to law enforcement?

Many victims trafficked into the United States do not speak or understand English and are, therefore, isolated and unable to communicate with service providers, law enforcement, and others who may be able to help them. Traffickers use force, fraud and coercion to compel these women, men, and children to engage in various activities. Victims generally do not have the language skills or knowledge of our culture. They may be suspicious of authorities and have no family or friends in the area. They are unlike citizens who are victims of domestic abuse and know our culture and laws. We could reasonably conclude that the victims face a serious and imminent threat to their health and safety and thus could report this to the authorities.

Refer to discussion 11.

25. Law enforcement wants information as a result of a missing person report. The patient, however, had opted out of the facility directory. Can the hospital give them the requested information?

If the patient opted out of the facility directory, information cannot be shared with law enforcement or others.

Refer to discussion 5.

26. A Florida hospital receives an order from a U.S. District court for the production of patient records.

HIPAA allows the release of the records. Under Florida law, the U.S. District court is considered a “court of competent jurisdiction” and the records can be released pursuant to the order. To be in compliance with HIPAA’s minimum necessary standard, the release of records should be limited to the scope of the order. If the order specifies “all records” relating to an individual, then all records must be released. Proper notice to the individual is required.

Refer to discussion 4.

27. *A Florida hospital receives a court order from an Alabama county court. It orders the release of medical records of a former hospital patient in connection with enforcement of a parent's family support obligation.*

HIPAA allows the release of the records. Florida has adopted the Uniform Interstate Family Support Act (Chapter 88, Fla. Stat.). In this instance, the out-of-state court can be considered a "court of competent jurisdiction" and the records may be released if the requirements of HIPAA have been met. Proper notice to the individual is required.

Refer to discussion 4.

28. *A private or hospital owned ambulance (considered covered entities)* reports to the scene of an assault to care for a victim who has been stabbed and the wound is potentially life-threatening. The victim refuses to give any information to the police regarding the circumstances surrounding the incident. During the transport, the patient shares with the ambulance crew that it was their spouse who stabbed them because they were angry but they really didn't mean it.*

Under HIPAA, 45 C.F.R. 164.512(f)(6) permits the disclosure of protected health information to law enforcement to alert them of the crime however, if there is any suspicion of domestic violence the rules of disclosure become subject to 164.512(c)(1)(i) whereby the disclosure is permitted if it is required by law.

Fla. Statute 790.24 requires a health care provider to report life-threatening injuries indicative of an act of violence. Therefore the ambulance crew would be required under Florida law to report what the patient told them.

*NOTE: If the first responders are from a Fire Department they may not qualify as a Covered Entity under HIPAA but they would be obligated to report under State law.

Refer to discussion 9.

Definitions

Authorization – The mechanism for obtaining consent from a patient for the use and disclosure of health information for a purpose that is not treatment, payment or health care operations as defined by HIPAA or not for other permitted disclosures such as those required by law or for public health purposes.

Correctional Institution – Any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody.

Covered Entity – An entity that must comply with HIPAA regulations – health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form.

Disclosure – The release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.

Health Information – Any information, either oral or recorded in any form or medium, that (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

Individual – The person who is the subject of protected health information.

Individually Identifiable Health Information – Information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past present or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Inmate – A person incarcerated in or otherwise confined to a correctional institution.

Law Enforcement Official – An officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to (1) investigate or conduct an official inquiry into a potential violation of law; or (2) prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

Minimum Necessary – The least amount of information possible to accomplish the intended purpose of the use, disclosure, or request.

Protected Health Information – Individually identifiable health information that is (1) transmitted by electronic media, (2) maintained in electronic media, or (3) transmitted or maintained in any other form or medium.

Required by Law – A mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law.

Use – With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

Workforce – Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

Reference Material

Memo re: Executive Order 14-280

Governor Scott's Executive Order 14-280 directs the Florida Department of Health to perform an initial assessment and subsequent active monitoring for 31 days of any traveler who has been identified by the CDC as having been in a county in West Africa affected by Ebola virus disease ("EVD"). The Executive Order places no independent obligation on law enforcement other than to assist the Department upon request. Similarly, while the Florida Department of Health has authority to quarantine individuals who may pose a risk to public health, the duty of law enforcement to enforce any such quarantine orders would only occur in response to a request for assistance from the Florida Department of Health. There is not duty under Chapter 381, Florida Statutes, or Executive Order 14-280 for law enforcement to take independent action; a request for assistance from the Florida Department of Health will trigger law enforcement engagement.

If the Florida Department of Health does ask law enforcement for assistance, requests will include at least the following information: (1) a statement/description of the type of assistance needed with as much detail as possible; (2) the legal authority upon which the request for assistance is based; (3) a description of the level of personal protection necessary for law enforcement officers to provide the assistance; and (4) an assessment of the threat to public health associated with the patient who is the subject of the request for assistance.

At the present time, there is no need for law enforcement assistance related to Florida's response to the EVD threat. Florida has no known cases of EVD and all identified travelers have demonstrated compliance with active monitoring requests from the Department. When the Department does need the assistance of law enforcement, we will be clear about the nature of our request and the lawful authority to make it.

Email from Sara Bourdeau, DOH
Incident Management Team
October 31, 2014

ED Guidelines for Sharing Information Absent Subpoena or Court Order

Areas where law enforcement may contact us:

<p>Patient is the victim of a crime:</p>	<p>You may provide information to law enforcement on the victim's behalf. Information cannot be used against the patient, make sure the officer understands this prior to discussing. If possible, ask the patient for a verbal consent and note for the records.</p>
<p>Patient is a suspect:</p>	<p></p>
<p><i>Patient is in handcuffs or is a jail inmate:</i></p>	<p>You can assume the patient is in custody of law enforcement. Note so in the record, and you may share any needed information.</p>
<p><i>Patient is not in handcuffs, but accompanied by law enforcement:</i></p>	<p>Ask if the patient is "free to go" or "is this patient in your custody". If the response is that the patient is not free to go, law enforcement custody is assumed. Note so in the record, and you may share any needed information. If the response is that the patient is not in their custody, and is free to go, you may only share basic demographic information and a general comment on what the patient is being treated for such as "possible drug overdose" or "injury to right leg". You cannot discuss lab results with the exception of what is allowed in the blood alcohol policy.</p>
<p>Patient could be a victim or a suspect</p>	<p>A scenario would be an injury, which came about from a drug deal. Most likely when you are treating the patient, you will only know the patient as a victim and you can share information with law enforcement with the understanding that it will not be used against the patient. If you learn the patient is a suspect, you then have to limit what you say following the suspect instructions above.</p>
<p>Deceased</p>	<p>If a patient arrives deceased or dies shortly after arrival, you may share any necessary information except lab results. The exception to this would be information allowed per the blood alcohol policy.</p>

These guidelines are for when the patient is present in the ER or up to 24 hours subsequent. After that time, contact the Administrative Coordinator.

Source: Naples Community Hospital

**MARTIN HEALTH SYSTEM
LAW ENFORCEMENT /DCF REQUEST FOR INFORMATION/RECORDS
WITHOUT PATIENT AUTHORIZATION**

Patient Name or description _____ Date of Birth, if known _____

Records requested _____ Date of Treatment, if known _____

Fax request to MHS at _____ (Fax number)

Contact name and number at MHS _____

As a State/Federal law enforcement officer conducting an active investigation authorized under Florida/Federal law, I am requesting **protected health information** (PHI) from Martin Health System (MHS). This form can also be used for release of information to the Department of Children and Families (DCF).

I am requesting this PHI for the reason(s) checked below:

The identified patient is a suspected victim of a reportable offense under Florida law, including abuse of a child or vulnerable adult.

(Adult with capacity MUST authorize the release. If not, confirm patient's inability to authorize. Oral authorization is acceptable if written authorization is impractical to obtain.)

The identified patient is a victim or suspected victim of _____ (name crime) **AND** the patient is incapable of giving consent to release his/her own PHI at this time; and, if I wait until the patient can authorize the release of PHI, the investigation would be materially and adversely affected.

The patient is deceased and the cause of death is suspected to have arisen from criminal conduct.

The PHI is necessary to avert serious harm to the public or another individual.

~~~~~  
For possible criminal conduct that has occurred at MHS, or for identification or locating a suspect, fugitive, material witness, or missing person or patient admits to a crime, contact Risk Management, Compliance or Legal.

**Note: Florida Law is stricter than the Health Insurance Portability and Accountability Act (HIPAA), therefore patient authorization to release PHI may be required.**

**Note: I understand that I will be given only the minimum necessary patient information.**

\_\_\_\_\_  
Printed name of Officer/Detective/Caseworker

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signed name of Officer/Detective/Caseworker

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Agency/ Phone/Contact Number

\_\_\_\_\_  
Fax number

\*\*\*\*\* **FOR MHS ASSOCIATES USE ONLY** \*\*\*\*\*

Associates MUST document the verification of the officer/caseworker's identity. Check one of the following.

|                                                                   |                                                                                  |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------|
| Name of Associate receiving request:                              | Badge Number and name of Police Department or Agency on Badge                    |
| Written request on Letterhead (Keep copy and attach to this form) | Other proof of status (explain, keep copy and attach to this form if in writing) |
| Business Card of Officer attached:                                | Records were given(attach copies to this form or document in Epic)               |

**Source: U.S. Dept. of Health & Human Services  
FAQs/Health Information Privacy**

**When does the Privacy Rule allow covered entities to disclose protected health information to law enforcement officials?**

**Answer:**

The Privacy Rule is balanced to protect an individual's privacy while allowing important law enforcement functions to continue. The Rule permits [covered entities](#) to disclose protected health information (PHI) to law enforcement officials, without the individual's written authorization, under specific circumstances summarized below. For a complete understanding of the conditions and requirements for these disclosures, please review the exact regulatory text at the citations provided. Disclosures for law enforcement purposes are permitted as follows:

- **To comply with a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or a grand jury subpoena.** The Rule recognizes that the legal process in obtaining a court order and the secrecy of the grand jury process provides protections for the individual's private information ([45 C.F.R. 164.512\(f\)\(1\)\(ii\)\(A\)-\(B\)](#)).
- **To respond to an administrative request**, such as an administrative subpoena or investigative demand or other written request from a law enforcement official. Because an administrative request may be made without judicial involvement, the Rule requires all administrative requests to include or be accompanied by a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used ([45 C.F.R. 164.512\(f\)\(1\)\(ii\)\(C\)](#)).
- **To respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person; but the covered entity must limit disclosures** of PHI to name and address, date and place of birth, social security number, ABO blood type and rh factor, type of injury, date and time of treatment, date and time of death, and a description of distinguishing physical characteristics. Other information related to the individual's DNA, dental records, body fluid or tissue typing, samples, or analysis cannot be disclosed under this provision, but may be disclosed in response to a court order, warrant, or written administrative request ([45 C.F.R. 164.512\(f\)\(2\)](#)).

**This same limited information may be reported to law enforcement:**

- **About a suspected perpetrator of a crime when the report is made by the victim who is a member of the covered entity's workforce** ([45 C.F.R. 164.502\(j\)\(2\)](#));
- **To identify or apprehend an individual who has admitted participation in a violent crime** that the covered entity reasonably believes may have caused serious physical harm to a victim, provided that the admission was not made in the course of or based on the individual's request for therapy, counseling, or treatment related to the propensity to commit this type of violent act ([45 C.F.R. 164.512\(j\)\(1\)\(ii\)\(A\), \(j\)\(2\)-\(3\)](#)).
- **To respond to a request for PHI about a victim of a crime, and the victim agrees.** If, because of an emergency or the person's incapacity, the individual cannot agree, the covered entity may disclose the PHI if law enforcement officials represent that the PHI is not

intended to be used against the victim, is needed to determine whether another person broke the law, the investigation would be materially and adversely affected by waiting until the victim could agree, and the covered entity believes in its professional judgment that doing so is in the best interests of the individual whose information is requested (45 C.F.R. 164.512(f)(3)).

Where child abuse victims or adult victims of abuse, neglect or domestic violence are concerned, other provisions of the Rule apply:

- **Child abuse or neglect may be reported** to any law enforcement official authorized by law to receive such reports and the agreement of the individual is not required (45 C.F.R. 164.512(b)(1)(ii)).
- **Adult abuse, neglect, or domestic violence may be reported** to a law enforcement official authorized by law to receive such reports (45 C.F.R. 164.512(c)):
  - If the individual agrees;
  - If the report is required by law; or
  - If expressly authorized by law, and based on the exercise of professional judgment, the report is necessary to prevent serious harm to the individual or others, or in certain other emergency situations (see 45 C.F.R. 164.512(c)(1)(iii)(B)).
  - Notice to the individual of the report may be required (see 45 C.F.R. 164.512(c)(2)).
- **To report PHI to law enforcement when required by law** to do so (45 C.F.R. 164.512(f)(1)(i)). For example, state laws commonly require health care providers to report incidents of gunshot or stab wounds, or other violent injuries; and the Rule permits disclosures of PHI as necessary to comply with these laws.
- **To alert law enforcement to the death of the individual**, when there is a suspicion that death resulted from criminal conduct (45 C.F.R. 164.512(f)(4)).
  - Information about a decedent may also be shared with **medical examiners or coroners to assist them in identifying the decedent, determining the cause of death, or to carry out their other authorized duties**(45 C.F.R. 164.512(g)(1)).
- **To report PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the covered entity's premises** (45 C.F.R. 164.512(f)(5)).
- **When responding to an off-site medical emergency, as necessary to alert law enforcement about criminal activity**, specifically, the commission and nature of the crime, the location of the crime or any victims, and the identity, description, and location of the perpetrator of the crime (45 C.F.R. 164.512(f)(6)). This provision does not apply if the covered health care provider believes that the individual in need of the emergency medical care is the victim of abuse, neglect or domestic violence; see above Adult abuse, neglect, or domestic violence for when reports to law enforcement are allowed under 45 C.F.R. 164.512(c).

- When consistent with applicable law and ethical standards:
  - To a law enforcement official reasonably able to **prevent or lessen a serious and imminent threat to the health or safety of an individual or the public** (45 C.F.R. 164.512(j)(1)(i)); or
  - **To identify or apprehend an individual who appears to have escaped from lawful custody** (45 C.F.R. 164.512(j)(1)(ii)(B)).
- **For certain other specialized governmental law enforcement purposes**, such as:
  - **To federal officials authorized to conduct** intelligence, counter-intelligence, and other national security activities under the National Security Act (45 C.F.R. 164.512(k)(2)) or to provide protective services to the President and others and conduct related investigations (45 C.F.R. 164.512(k)(3));
  - **To respond to a request for PHI by a correctional institution or a law enforcement official having lawful custody** of an inmate or others if they represent such PHI is needed to provide health care to the individual; for the health and safety of the individual, other inmates, officers or employees of or others at a correctional institution or responsible for the transporting or transferring inmates; or for the administration and maintenance of the safety, security, and good order of the correctional facility, including law enforcement on the premises of the facility (45 C.F.R. 164.512(k)(5)).

Except when required by law, the disclosures to law enforcement summarized above are subject to a minimum necessary determination by the covered entity (45 C.F.R. 164.502(b), 164.514(d)). When reasonable to do so, the covered entity may rely upon the representations of the law enforcement official (as a public officer) as to what information is the minimum necessary for their lawful purpose (45 C.F.R. 164.514(d)(3)(iii)(A)). Moreover, if the law enforcement official making the request for information is not known to the covered entity, the covered entity must verify the identity and authority of such person prior to disclosing the information (45 C.F.R. 164.514(h)).

## Miscellaneous Q & A

**Based upon your hospital's internal policies and procedures, use with caution. These represent policies from various providers but are not exclusive positions of Florida law or HIPAA. Consult your facility's privacy officer.**

### General Scenarios

**Q. If a patient is in the facility directory and law enforcement asks to be notified of a pending discharge so that they may execute a warrant for the patient's arrest, can I let them know when the patient is set to be discharged?**

A. Yes, if asked, you may provide the information about an imminent discharge. There is neither an obligation nor a requirement for the clinical staff to contact law enforcement.

**Q. If a patient is not in the facility directory and law enforcement asks to be notified of a pending discharge so that they may execute a warrant for the patient's arrest, can I let them know when the patient is set to be discharged?**

A. Yes, only if there is a real threat to public safety, or if the patient is under a Baker Act, law enforcement may be notified of a pending discharge.

**Q. If a patient is not in the facility directory and law enforcement asks to be notified of a pending discharge so that they may question the patient, can I let them know when the patient is set to be discharged?**

A. No. The patient has requested to be a No Information Patient and there is no indication that there is a real danger or that law enforcement has intentions of arresting the individual.

**Q. If a team member, who is curious, looks up patients on the floor and finds that a patient has an outstanding warrant for a non-violent offense? Can we call law enforcement?**

A. No. It is a privacy violation to use patient information for any reason other than your job function. Team members should not be surfing the web to see if patients are wanted for crimes.

**Q. If Child Protective Investigative (CPI) Services from the Sheriff's Department requests medical records as part of an alleged child abuse investigation, can I release the records?**

A. Yes. Medical records may be released to the Department of Children and Families or their designee for the purpose of investigations of cases of abuse, neglect, or exploitation of children or vulnerable adults.

**Q. If a process server wants to serve a patient with a subpoena, what should I do?**

A. If the patient is listed in the facility directory and has been asked for by name, you may provide the location in the facility. If possible and prior to allowing a process server into a patient's room, check to see if the patient's condition is stable enough for visitors and ask the patient if they are willing to have the process server visit. If the patient is listed as a No Information Patient, even if asked for by name, no information should be provided and the process server should be asked to leave.

**Q. A County Sheriff Officer (CSO) wants to be notified of the imminent discharge of a patient that is listed in the facility directory so that the patient may be arrested. The patient has an arrest warrant in another county and the CSO does not have a copy, what should I do?**

A. If the patient is listed in the directory then the nurse may disclose this information. If the patient is a No Information Patient then the information may not be released unless by using your professional judgment and only if there is a real threat to public safety.

**Q. A law enforcement official requests the nurse print the clinical record of a patient treated with a gunshot wound, what should I do?**

A. Do not print the medical record. All requests for copies of the medical record should go through HIM, unless the patient is being transferred back to a correctional facility or jail and is in the custody of law enforcement and the information is required for continued treatment purposes.

**Q. A law enforcement officer requests the nurse provide him with the results on the blood alcohol level that was ordered by the doctor for medical purposes, what do I do?**

A. The blood alcohol level testing was done for medical purposes and cannot be provided to law enforcement without the patient's authorization.

### **Behavioral Health Scenarios**

**Q. A law enforcement official presents to a behavioral health center to serve an injunction to a patient. The patient does not want contact with the law enforcement official, what do I do?**

A. Inform law enforcement that they are not permitted to see the patient.

**Q. If a patient is under a Baker Act, is not in the facility directory and law enforcement asks to be notified of a pending discharge so that they may execute a warrant for the patient's arrest, can I let them know when the patient is set to be discharged?**

A. Yes, law enforcement may be notified of a pending discharge when the patient is to be arrested.

### **Physician Office Scenarios**

**Q. A Deputy/Detective from the Sheriff's Department requests medical records as part of an alleged narcotic investigation and has received patient authorization, can I release the records?**

A. Yes, if the patient has signed a valid HIPAA authorization for the release of information to the Sheriff's Department.

**Q. A Deputy/Detective from the Sheriff's Department requests medical records as part of an alleged narcotic investigation and has not received patient authorization, can I release the records?**

A. Yes, if the Deputy or Detective has a valid court order or subpoena.

**Q. If I receive a call from Department of Children and Families requesting medical records regarding a complaint received from a patient, can I send the records based on the information provided over the phone?**

A. Information may not be released over the phone because identity cannot be verified.

**Q. If the office receives a call from a Sheriff's Officer from the scene of a crime/patient's home can we answer any questions in regards to protected health information?**

A. Information may not be released over the phone because identity cannot be verified.

## Florida Law Cites

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| Chapter 394                      | Too Large                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Fla. Admin. Code R. 59A-3.214(7) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Fla. Admin. Code R. 65E-5.250    | <p><b>Clinical Records; Confidentiality.</b></p> <p>(1) Except as otherwise provided by law, verbal or written information about a person shall only be released when the competent person, or a duly authorized legal decision-maker such as guardian, guardian advocate, or health care surrogate or proxy provides consent to such release. When such information is released, a copy of a signed authorization form shall be retained in the person's clinical record. Recommended form CF-MH 3044, Feb. 05, "Authorization for Release of Information," which is incorporated by reference and may be obtained pursuant to Rule 65E-5.120, F.A.C., of this rule chapter may be used as documentation. Consent or authorization forms may not be altered in any way after signature by the person or other authorized decision-maker nor may a person or other authorized decision-maker be allowed to sign a blank form.</p> <p>(2) Facility staff shall inform each person that he or she has the right to waive, in writing, the confidentiality of his or her presence in a receiving or treatment facility and to communicate with all or a group of individuals as specified by the person. Recommended form CF-MH 3048, Feb. 05, "Confidentiality Agreement," as referenced in subsection 65E-5.190(1), F.A.C., may be used for this purpose.</p> <p>(3) For purposes of Section 394.4615(3)(b), F.S., a "qualified researcher" is one who after making application to review confidential data and who, after documenting his or her bona fide academic, scientific or medical credentials and describing the particular research which gives rise to the request, is determined by the administrator of a receiving or treatment facility or by the Secretary of the department, to be eligible to review such data. In making that determination the administrator or the Secretary shall weigh the person's right to privacy against the benefit of disclosure and shall determine whether the disclosure is in the best interest of the state. Person identifying information obtained by such a qualified researcher shall not be further disclosed without the express and informed consent of the person or individual authorized to provide consent for him or her.</p> <p>(4) When a person's access to his or her clinical record or any part of his or her record is restricted by written order of the attending physician such restriction shall be documented in the person's clinical record. If the request is denied or such access is restricted, a written response shall be provided to the person. Recommended form CF-MH 3110, Feb. 05, "Restriction of Person's Access to Own Record," which is incorporated by reference and may be obtained pursuant to Rule 65E-5.120, F.A.C., of this rule chapter may be used for such documentation.</p> <p>(5) Each receiving facility shall develop detailed policies and procedures governing release of records to each person requesting release, including criteria for determining what type of information may be harmful to the person, establishing a reasonable time for responding to requests for access, and identifying methods of providing access that ensure clinical support to the person while securing the integrity of the record.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Fla. Stat. §39.201(1)            | <p>Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—</p> <p>(1)(a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Fla. Stat. § 88                  | Too large                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Fla. Stat. §316.1933             | <p>Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.—</p> <p>(1)(a) If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. <a href="#">877.111</a> or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. <a href="#">316.1932</a>, the testing required by this paragraph need not be incidental to a lawful arrest of the person.</p> <p>(b) The term "serious bodily injury" means an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.</p> <p>(2)(a) Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood shall not affect the admissibility of a test of blood withdrawn for medical purposes.</p> <p>1. Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, if a health care provider, who is providing medical care in a health care facility to a person injured in a motor vehicle crash, becomes aware, as a result of any blood test performed in the course of that medical treatment, that the person's blood-alcohol level meets or exceeds the blood-alcohol level specified in s. <a href="#">316.193</a>(1)(b), the health care provider may notify any law enforcement officer or law enforcement agency. Any such notice must be given within a reasonable time after the health care provider receives the test result. Any such notice shall be used only for the purpose of providing the law enforcement officer with reasonable cause to request the withdrawal of a blood sample pursuant to this section.</p> <p>2. The notice shall consist only of the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level indicated by the test, and the date and time of the administration of the test.</p> <p>3. Nothing contained in s. <a href="#">395.3025</a>(4), s. <a href="#">456.057</a>, or any applicable practice act affects the authority to provide notice under this section, and the health care provider is not considered to have breached any duty owed to the person under s. <a href="#">395.3025</a>(4), s. <a href="#">456.057</a>, or any applicable practice act by providing notice or failing to provide notice. It shall not be a breach of any ethical, moral, or legal duty for a health care provider to provide notice or fail to provide notice.</p> <p>4. A civil, criminal, or administrative action may not be brought against any person or health care provider participating in good faith in the provision of notice or failure to provide notice as provided in this section. Any person or health care provider</p> |



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|                               | <p>participating in the provision of notice or failure to provide notice as provided in this section shall be immune from any civil or criminal liability and from any professional disciplinary action with respect to the provision of notice or failure to provide notice under this section. Any such participant has the same immunity with respect to participating in any judicial proceedings resulting from the notice or failure to provide notice.</p> <p>(b) A chemical analysis of the person’s blood to determine the alcoholic content thereof must have been performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department for this purpose. The Department of Law Enforcement may approve satisfactory techniques or methods, ascertain the qualifications and competence of individuals to conduct such analyses, and issue permits that are subject to termination or revocation at the discretion of the department. Any insubstantial differences between approved methods or techniques and actual testing procedures, or any insubstantial defects concerning the permit issued by the department, in any individual case, shall not render the test or test results invalid.</p> <p>(c) No hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer shall incur any civil or criminal liability as a result of the withdrawal or analysis of a blood specimen pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.</p> <p>(3)(a) Any criminal charge resulting from the incident giving rise to the officer’s demand for testing shall be tried concurrently with a charge of any violation arising out of the same incident, unless, in the discretion of the court, such charges should be tried separately. If such charges are tried separately, the fact that such person refused, resisted, obstructed, or opposed testing shall be admissible at the trial of the criminal offense which gave rise to the demand for testing.</p> <p>(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.</p> <p>(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or the presence of chemical substances or controlled substances in the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. <a href="#">316.193</a> upon request for such information.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>Fla. Stat. §322.126(2)</p> | <p>Any physician, person, or agency having knowledge of any licensed driver’s or applicant’s mental or physical disability to drive or need to obtain or to wear a medical identification bracelet is authorized to report such knowledge to the Department of Highway Safety and Motor Vehicles. The report should be made in writing giving the full name, date of birth, address, and a description of the alleged disability of any person over 15 years of age having mental or physical disorders that could affect his or her driving ability.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>Fla. Stat. §381.0031</p>   | <p>Epidemiological research; report of diseases of public health significance to department.—</p> <p>(1) The department may conduct studies concerning the epidemiology of diseases of public health significance affecting people in Florida.</p> <p>(2) Any practitioner licensed in this state to practice medicine, osteopathic medicine, chiropractic medicine, naturopathy, or veterinary medicine; any hospital licensed under part I of chapter 395; or any laboratory licensed under chapter 483 that diagnoses or suspects the existence of a disease of public health significance shall immediately report the fact to the Department of Health.</p> <p>(3) An animal control officer operating under s. <a href="#">828.27</a>, a wildlife officer operating under s. <a href="#">379.3311</a>, or an animal disease laboratory operating under s. <a href="#">585.61</a> shall report knowledge of any animal bite, diagnosis of disease in an animal, or suspicion of a grouping or clustering of animals having similar disease, symptoms, or syndromes that may indicate the presence of a threat to humans.</p> <p>(4) The department shall periodically issue a list of infectious or noninfectious diseases determined by it to be a threat to public health and therefore of significance to public health and shall furnish a copy of the list to the practitioners listed in subsection (2). The list shall be based on the diseases recommended to be nationally notifiable by the Council of State and Territorial Epidemiologists and the Centers for Disease Control and Prevention. The department may expand upon the list if a disease emerges for which regular, frequent, and timely information regarding individual cases is considered necessary for the prevention and control of a disease specific to Florida.</p> <p>(5) Reports required by this section must be in accordance with methods specified by rule of the department.</p> <p>(6) Information submitted in reports required by this section is confidential, exempt from the provisions of s. <a href="#">119.07(1)</a>, and is to be made public only when necessary to public health. A report so submitted is not a violation of the confidential relationship between practitioner and patient.</p> <p>(7) The department may obtain and inspect copies of medical records, records of laboratory tests, and other medical-related information for reported cases of diseases of public health significance described in subsection (4). The department shall examine the records of a person who has a disease of public health significance only for purposes of preventing and eliminating outbreaks of disease and making epidemiological investigations of reported cases of diseases of public health significance, notwithstanding any other law to the contrary. Health care practitioners, licensed health care facilities, and laboratories shall allow the department to inspect and obtain copies of such medical records and medical-related information, notwithstanding any other law to the contrary. Release of medical records and medical-related information to the department by a health care practitioner, licensed health care facility, or laboratory, or by an authorized employee or agent thereof, does not constitute a violation of the confidentiality of patient records. A health care practitioner, health care facility, or laboratory, or any employee or agent thereof, may not be held liable in any manner for damages and is not subject to criminal penalties for providing patient records to the department as authorized by this section.</p> <p>(8) The department may adopt rules related to reporting diseases of significance to public health, which must specify the information to be included in the report, who is required to report, the method and time period for reporting, requirements for enforcement, and required followup activities by the department which are necessary to protect public health.</p> <p>(9) This section does not affect s. <a href="#">384.25</a>.</p> |
| <p>Fla. Stat. §381.00315</p>  | <p>Public health advisories; public health emergencies; quarantines.—The State Health Officer is responsible for declaring public health emergencies and quarantines and issuing public health advisories.</p> <p>(1) As used in this section, the term:</p> <p>(a) “Public health advisory” means any warning or report giving information to the public about a potential public health threat. Prior to issuing any public health advisory, the State Health Officer must consult with any state or local agency regarding areas of responsibility which may be affected by such advisory. Upon determining that issuing a public health advisory is necessary to</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

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|                                 | <p>protect the public health and safety, and prior to issuing the advisory, the State Health Officer must notify each county health department within the area which is affected by the advisory of the State Health Officer's intent to issue the advisory. The State Health Officer is authorized to take any action appropriate to enforce any public health advisory.</p> <p>(b) "Public health emergency" means any occurrence, or threat thereof, whether natural or man made, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters. Prior to declaring a public health emergency, the State Health Officer shall, to the extent possible, consult with the Governor and shall notify the Chief of Domestic Security. The declaration of a public health emergency shall continue until the State Health Officer finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and he or she terminates the declaration. However, a declaration of a public health emergency may not continue for longer than 60 days unless the Governor concurs in the renewal of the declaration. The State Health Officer, upon declaration of a public health emergency, may take actions that are necessary to protect the public health. Such actions include, but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Directing manufacturers of prescription drugs or over-the-counter drugs who are permitted under chapter 499 and wholesalers of prescription drugs located in this state who are permitted under chapter 499 to give priority to the shipping of specified drugs to pharmacies and health care providers within geographic areas that have been identified by the State Health Officer. The State Health Officer must identify the drugs to be shipped. Manufacturers and wholesalers located in the state must respond to the State Health Officer's priority shipping directive before shipping the specified drugs.</li> <li>2. Notwithstanding chapters 465 and 499 and rules adopted thereunder, directing pharmacists employed by the department to compound bulk prescription drugs and provide these bulk prescription drugs to physicians and nurses of county health departments or any qualified person authorized by the State Health Officer for administration to persons as part of a prophylactic or treatment regimen.</li> <li>3. Notwithstanding s. <a href="#">456.036</a>, temporarily reactivating the inactive license of the following health care practitioners, when such practitioners are needed to respond to the public health emergency: physicians licensed under chapter 458 or chapter 459; physician assistants licensed under chapter 458 or chapter 459; licensed practical nurses, registered nurses, and advanced registered nurse practitioners licensed under part I of chapter 464; respiratory therapists licensed under part V of chapter 468; and emergency medical technicians and paramedics certified under part III of chapter 401. Only those health care practitioners specified in this paragraph who possess an unencumbered inactive license and who request that such license be reactivated are eligible for reactivation. An inactive license that is reactivated under this paragraph shall return to inactive status when the public health emergency ends or prior to the end of the public health emergency if the State Health Officer determines that the health care practitioner is no longer needed to provide services during the public health emergency. Such licenses may only be reactivated for a period not to exceed 90 days without meeting the requirements of s. <a href="#">456.036</a> or chapter 401, as applicable.</li> <li>4. Ordering an individual to be examined, tested, vaccinated, treated, or quarantined for communicable diseases that have significant morbidity or mortality and present a severe danger to public health. Individuals who are unable or unwilling to be examined, tested, vaccinated, or treated for reasons of health, religion, or conscience may be subjected to quarantine. <ol style="list-style-type: none"> <li>a. Examination, testing, vaccination, or treatment may be performed by any qualified person authorized by the State Health Officer.</li> <li>b. If the individual poses a danger to the public health, the State Health Officer may subject the individual to quarantine. If there is no practical method to quarantine the individual, the State Health Officer may use any means necessary to vaccinate or treat the individual.</li> </ol> </li> </ol> <p>Any order of the State Health Officer given to effectuate this paragraph shall be immediately enforceable by a law enforcement officer under s. <a href="#">381.0012</a>.</p> <p>(2) Individuals who assist the State Health Officer at his or her request on a volunteer basis during a public health emergency are entitled to the benefits specified in s. <a href="#">110.504</a>(2), (3), (4), and (5).</p> <p>(3) To facilitate effective emergency management, when the United States Department of Health and Human Services contracts for the manufacture and delivery of licensable products in response to a public health emergency and the terms of those contracts are made available to the states, the department shall accept funds provided by counties, municipalities, and other entities designated in the state emergency management plan required under s. <a href="#">252.35</a>(2)(a) for the purpose of participation in those contracts. The department shall deposit those funds in the Grants and Donations Trust Fund and expend those funds on behalf of the donor county, municipality, or other entity for the purchase of the licensable products made available under the contract.</p> <p>(4) The department has the duty and the authority to declare, enforce, modify, and abolish quarantines of persons, animals, and premises as the circumstances indicate for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health, except as provided in ss. <a href="#">384.28</a> and <a href="#">392.545-392.60</a>.</p> <p>(5) The department shall adopt rules to specify the conditions and procedures for imposing and releasing a quarantine. The rules must include provisions related to:</p> <ol style="list-style-type: none"> <li>(a) The closure of premises.</li> <li>(b) The movement of persons or animals exposed to or infected with a communicable disease.</li> <li>(c) The tests or treatment, including vaccination, for communicable disease required prior to employment or admission to the premises or to comply with a quarantine.</li> <li>(d) Testing or destruction of animals with or suspected of having a disease transmissible to humans.</li> <li>(e) Access by the department to quarantined premises.</li> <li>(f) The disinfection of quarantined animals, persons, or premises.</li> <li>(g) Methods of quarantine.</li> </ol> <p>(6) The rules adopted under this section and actions taken by the department pursuant to a declared public health emergency or quarantine shall supersede all rules enacted by other state departments, boards or commissions, and ordinances and regulations enacted by political subdivisions of the state. Any person who violates any rule adopted under this section, any quarantine, or any requirement adopted by the department pursuant to a declared public health emergency, commits a misdemeanor of the second degree, punishable as provided in s. <a href="#">775.082</a> or s. <a href="#">775.083</a>.</p> |
| <p>Fla. Stat. § 394.4593(5)</p> | <p>An employee who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the department's central abuse hotline and to the appropriate local law enforcement agency. Such employee shall also prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The employee shall deliver the report to the supervisor or program director, who is responsible for providing copies to the department's inspector general. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                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| Fla. Stat. § 394.4615    | <p>394.4615 Clinical records; confidentiality.—</p> <p>(1) A clinical record shall be maintained for each patient. The record shall include data pertaining to admission and such other information as may be required under rules of the department. A clinical record is confidential and exempt from the provisions of s. <a href="#">119.07</a>(1). Unless waived by express and informed consent, by the patient or the patient’s guardian or guardian advocate or, if the patient is deceased, by the patient’s personal representative or the family member who stands next in line of intestate succession, the confidential status of the clinical record shall not be lost by either authorized or unauthorized disclosure to any person, organization, or agency.</p> <p>(2) The clinical record shall be released when:</p> <p>(a) The patient or the patient’s guardian authorizes the release. The guardian or guardian advocate shall be provided access to the appropriate clinical records of the patient. The patient or the patient’s guardian or guardian advocate may authorize the release of information and clinical records to appropriate persons to ensure the continuity of the patient’s health care or mental health care.</p> <p>(b) The patient is represented by counsel and the records are needed by the patient’s counsel for adequate representation.</p> <p>(c) The court orders such release. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.</p> <p>(d) The patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Family Services, and the Department of Corrections requests such records. These records shall be furnished without charge to the Department of Corrections.</p> <p>(3) Information from the clinical record may be released in the following circumstances:</p> <p>(a) When a patient has declared an intention to harm other persons. When such declaration has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.</p> <p>(b) When the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs. For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. <a href="#">394.4655</a>, the clinical record may be released to the state attorney, the public defender or the patient’s private legal counsel, the court, and to the appropriate mental health professionals, including the service provider identified in s. <a href="#">394.4655</a>(6)(b)2., in accordance with state and federal law.</p> <p>(4) Information from clinical records may be used for statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.</p> <p>(5) Information from clinical records may be used by the Agency for Health Care Administration, the department, and the Florida advocacy councils for the purpose of monitoring facility activity and complaints concerning facilities.</p> <p>(6) Clinical records relating to a Medicaid recipient shall be furnished to the Medicaid Fraud Control Unit in the Department of Legal Affairs, upon request.</p> <p>(7) Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from the provisions of s. <a href="#">119.07</a>(1).</p> <p>(8) Any facility or private mental health practitioner who acts in good faith in releasing information pursuant to this section is not subject to civil or criminal liability for such release.</p> <p>(9) Nothing in this section is intended to prohibit the parent or next of kin of a person who is held in or treated under a mental health facility or program from requesting and receiving information limited to a summary of that person’s treatment plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved.</p> <p>(10) Patients shall have reasonable access to their clinical records, unless such access is determined by the patient’s physician to be harmful to the patient. If the patient’s right to inspect his or her clinical record is restricted by the facility, written notice of such restriction shall be given to the patient and the patient’s guardian, guardian advocate, attorney, and representative. In addition, the restriction shall be recorded in the clinical record, together with the reasons for it. The restriction of a patient’s right to inspect his or her clinical record shall expire after 7 days but may be renewed, after review, for subsequent 7-day periods.</p> <p>(11) Any person who fraudulently alters, defaces, or falsifies the clinical record of any person receiving mental health services in a facility subject to this part, or causes or procures any of these offenses to be committed, commits a misdemeanor of the second degree, punishable as provided in s. <a href="#">775.082</a> or s. <a href="#">775.083</a>.</p> |
| Fla. Stat. §395.0197(10) | <p>Any witness who witnessed or who possesses actual knowledge of the act that is the basis of an allegation of sexual abuse shall:</p> <p>(a) Notify the local police; and</p> <p>(b) Notify the hospital risk manager and the administrator.</p> <p>For purposes of this subsection, “sexual abuse” means acts of a sexual nature committed for the sexual gratification of anyone upon, or in the presence of, a vulnerable adult, without the vulnerable adult’s informed consent, or a minor. “Sexual abuse” includes, but is not limited to, the acts defined in s. <a href="#">794.011</a>(1)(h), fondling, exposure of a vulnerable adult’s or minor’s sexual organs, or the use of the vulnerable adult or minor to solicit for or engage in prostitution or sexual performance. “Sexual abuse” does not include any act intended for a valid medical purpose or any act which may reasonably be construed to be a normal caregiving action.</p>                                                          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| Fla. Stat. §395.3025     | <p>Patient and personnel records; copies; examination.—</p> <p>(1) Any licensed facility shall, upon written request, and only after discharge of the patient, furnish, in a timely manner, without delays for legal review, to any person admitted therein for care and treatment or treated thereat, or to any such person’s guardian, curator, or personal representative, or in the absence of one of those persons, to the next of kin of a decedent or the parent of a minor, or to anyone designated by such person in writing, a true and correct copy of all patient records, including X rays, and insurance information concerning such person, which records are in the possession of the licensed facility, provided the person requesting such records agrees to pay a charge. The exclusive charge for copies of patient records may include sales tax and actual postage, and, except for nonpaper records that are subject to a charge not to exceed \$2, may not exceed \$1 per page. A fee of up to \$1 may be charged for each year of records requested. These charges shall apply to all records furnished, whether directly from the facility or from a copy service providing these services on behalf of the facility. However, a patient whose records are copied or searched for the purpose of continuing to receive medical care is not required to pay a charge for copying or for the search. The licensed facility shall further allow any such person to examine the original records in its possession, or</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

microforms or other suitable reproductions of the records, upon such reasonable terms as shall be imposed to assure that the records will not be damaged, destroyed, or altered.

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

(3) This section does not apply to records of substance abuse impaired persons, which are governed by s. [397.501](#).

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

- Licensed facility personnel, attending physicians, or other health care practitioners and providers currently involved in the care or treatment of the patient for use only in connection with the treatment of the patient.
- Licensed facility personnel only for administrative purposes or risk management and quality assurance functions.
- The agency, for purposes of health care cost containment.
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the patient or his or her legal representative.
- The agency upon subpoena issued pursuant to s. [456.071](#), but the records obtained thereby must be used solely for the purpose of the agency and the appropriate professional board in its investigation, prosecution, and appeal of disciplinary proceedings. If the agency requests copies of the records, the facility shall charge no more than its actual copying costs, including reasonable staff time. The records must be sealed and must not be available to the public pursuant to s. [119.07](#)(1) or any other statute providing access to records, nor may they be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the agency or the appropriate regulatory board. However, the agency must make available, upon written request by a practitioner against whom probable cause has been found, any such records that form the basis of the determination of probable cause.
- The Department of Health or its agent, for the purpose of establishing and maintaining a trauma registry and for the purpose of ensuring that hospitals and trauma centers are in compliance with the standards and rules established under ss. [395.401](#), [395.4015](#), [395.4025](#), [395.404](#), [395.4045](#), and [395.405](#), and for the purpose of monitoring patient outcome at hospitals and trauma centers that provide trauma care services.
- The Department of Children and Families or its agent, for the purpose of investigations of cases of abuse, neglect, or exploitation of children or vulnerable adults.
- A local trauma agency or a regional trauma agency that performs quality assurance activities, a panel or committee assembled to assist a local trauma agency, or a regional trauma agency performing quality assurance activities. Patient records obtained under this paragraph are confidential and exempt from s. [119.07](#)(1) and s. 24(a), Art. I of the State Constitution.
- Organ procurement organizations, tissue banks, and eye banks required to conduct death records reviews pursuant to s. [395.2050](#).
- The Medicaid Fraud Control Unit in the Department of Legal Affairs pursuant to s. [409.920](#).
- The Department of Financial Services, or an agent, employee, or independent contractor of the department who is auditing for unclaimed property pursuant to chapter 717.
- A regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. [395.1027](#) and the professional organization that certifies poison control centers in accordance with federal law.

(5) The Department of Health may examine patient records of a licensed facility, whether held by the facility or the Agency for Health Care Administration, for the purpose of epidemiological investigations. The unauthorized release of information by agents of the department which would identify an individual patient is a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(6) Patient records shall contain information required for completion of birth, death, and fetal death certificates.

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

(b) Absent a specific written release or authorization permitting utilization of patient information for solicitation or marketing the sale of goods or services, any use of that information for those purposes is prohibited.

(8) Patient records at hospitals and ambulatory surgical centers are exempt from disclosure under s. [119.07](#)(1), except as provided by subsections (1)-(5).

(9) A licensed facility may prescribe the content and custody of limited-access records which the facility may maintain on its employees. Such records shall be limited to information regarding evaluations of employee performance, including records forming the basis for evaluation and subsequent actions, and shall be open to inspection only by the employee and by officials of the facility who are responsible for the supervision of the employee. The custodian of limited-access employee records shall release information from such records to other employers or only upon authorization in writing from the employee or upon order of a court of competent jurisdiction. Any facility releasing such records pursuant to this part shall be considered to be acting in good faith and may not be held liable for information contained in such records, absent a showing that the facility maliciously falsified such records. Such limited-access employee records are exempt from the provisions of s. [119.07](#)(1) for a period of 5 years from the date such records are designated limited-access records.

(10) The home addresses, telephone numbers, and photographs of employees of any licensed facility who provide direct patient care or security services; the home addresses, telephone numbers, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are confidential and exempt from s. [119.07](#)(1) and s. 24(a), Art. I of the State Constitution. However, any state or federal agency that is authorized to have access to such information by any provision of law shall be granted such access in the furtherance of its statutory duties, notwithstanding the provisions of this subsection. The Department of Financial Services, or an agent, employee, or independent contractor of the department who is auditing for unclaimed property pursuant to chapter 717, shall be granted access to the name, address, and social security number of any employee owed unclaimed property.

(11) The home addresses, telephone numbers, and photographs of employees of any licensed facility who have a reasonable belief, based upon specific circumstances that have been reported in accordance with the procedure adopted by the facility, that release of the information may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family; the home addresses, telephone numbers, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons



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|                            | <p>are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, any state or federal agency that is authorized to have access to such information by any provision of law shall be granted such access in the furtherance of its statutory duties, notwithstanding the provisions of this subsection. The licensed facility shall maintain the confidentiality of the personal information only if the employee submits a written request for confidentiality to the licensed facility.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    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| <p>Fla. Stat. §397.501</p> | <p>Rights of individuals.—Individuals receiving substance abuse services from any service provider are guaranteed protection of the rights specified in this section, unless otherwise expressly provided, and service providers must ensure the protection of such rights.</p> <p>(1) <b>RIGHT TO INDIVIDUAL DIGNITY.</b>—The dignity of the individual served must be respected at all times and upon all occasions, including any occasion when the individual is admitted, retained, or transported. Individuals served who are not accused of a crime or delinquent act may not be detained or incarcerated in jails, detention centers, or training schools of the state, except for purposes of protective custody in strict accordance with this chapter. An individual may not be deprived of any constitutional right.</p> <p>(2) <b>RIGHT TO NONDISCRIMINATORY SERVICES.</b>—</p> <p>(a) Service providers may not deny an individual access to substance abuse services solely on the basis of race, gender, ethnicity, age, sexual preference, human immunodeficiency virus status, prior service departures against medical advice, disability, or number of relapse episodes. Service providers may not deny an individual who takes medication prescribed by a physician access to substance abuse services solely on that basis. Service providers who receive state funds to provide substance abuse services may not, if space and sufficient state resources are available, deny access to services based solely on inability to pay.</p> <p>(b) Each individual in treatment must be afforded the opportunity to participate in the formulation and periodic review of his or her individualized treatment or service plan to the extent of his or her ability to so participate.</p> <p>(c) It is the policy of the state to use the least restrictive and most appropriate services available, based on the needs and the best interests of the individual and consistent with optimum care of the individual.</p> <p>(d) Each individual must be afforded the opportunity to participate in activities designed to enhance self-image.</p> <p>(3) <b>RIGHT TO QUALITY SERVICES.</b>—</p> <p>(a) Each individual must be delivered services suited to his or her needs, administered skillfully, safely, humanely, with full respect for his or her dignity and personal integrity, and in accordance with all statutory and regulatory requirements.</p> <p>(b) These services must include the use of methods and techniques to control aggressive behavior that poses an immediate threat to the individual or to other persons. Such methods and techniques include the use of restraints, the use of seclusion, the use of time-out, and other behavior management techniques. When authorized, these methods and techniques may be applied only by persons who are employed by service providers and trained in the application and use of these methods and techniques. The department must specify by rule the methods that may be used and the techniques that may be applied by service providers to control aggressive behavior and must specify by rule the physical facility requirements for seclusion rooms, including dimensions, safety features, methods of observation, and contents.</p> <p>(4) <b>RIGHT TO COMMUNICATION.</b>—</p> <p>(a) Each individual has the right to communicate freely and privately with other persons within the limitations imposed by service provider policy.</p> <p>(b) Because the delivery of services can only be effective in a substance abuse free environment, close supervision of each individual’s communications and correspondence is necessary, particularly in the initial stages of treatment, and the service provider must therefore set reasonable rules for telephone, mail, and visitation rights, giving primary consideration to the well-being and safety of individuals, staff, and the community. It is the duty of the service provider to inform the individual and his or her family if the family is involved at the time of admission about the provider’s rules relating to communications and correspondence.</p> <p>(5) <b>RIGHT TO CARE AND CUSTODY OF PERSONAL EFFECTS.</b>—An individual has the right to possess clothing and other personal effects. The service provider may take temporary custody of the individual’s personal effects only when required for medical or safety reasons, with the reason for taking custody and a list of the personal effects recorded in the individual’s clinical record.</p> <p>(6) <b>RIGHT TO EDUCATION OF MINORS.</b>—Each minor in a residential service component is guaranteed education and training appropriate to his or her needs. The service provider shall coordinate with local education agencies to ensure that education and training is provided to each minor in accordance with other applicable laws and regulations and that parental responsibilities related to such education and training are established within the provisions of such applicable laws and regulations. This chapter does not relieve any local education authority of its obligation under law to provide a free and appropriate education to every child.</p> <p>(7) <b>RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.</b>—</p> <p>(a) The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with this chapter and with applicable federal confidentiality regulations and are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such records may not be disclosed without the written consent of the individual to whom they pertain except that appropriate disclosure may be made without such consent:</p> <ol style="list-style-type: none"> <li>1. To medical personnel in a medical emergency.</li> <li>2. To service provider personnel if such personnel need to know the information in order to carry out duties relating to the provision of services to an individual.</li> <li>3. To the secretary of the department or the secretary’s designee, for purposes of scientific research, in accordance with federal confidentiality regulations, but only upon agreement in writing that the individual’s name and other identifying information will not be disclosed.</li> <li>4. In the course of review of service provider records by persons who are performing an audit or evaluation on behalf of any federal, state, or local government agency, or third-party payor providing financial assistance or reimbursement to the service provider; however, reports produced as a result of such audit or evaluation may not disclose names or other identifying information and must be in accordance with federal confidentiality regulations.</li> <li>5. Upon court order based on application showing good cause for disclosure. In determining whether there is good cause for disclosure, the court shall examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself.</li> </ol> <p>(b) The restrictions on disclosure and use in this section do not apply to communications from provider personnel to law enforcement officers which:</p> <ol style="list-style-type: none"> <li>1. Are directly related to an individual’s commission of a crime on the premises of the provider or against provider personnel or</li> </ol> |

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|                                   | <p>to a threat to commit such a crime; and</p> <p>2. Are limited to the circumstances of the incident, including the status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.</p> <p>(c) The restrictions on disclosure and use in this section do not apply to the reporting of incidents of suspected child abuse and neglect to the appropriate state or local authorities as required by law. However, such restrictions continue to apply to the original substance abuse records maintained by the provider, including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.</p> <p>(d) Any answer to a request for a disclosure of individual records which is not permissible under this section or under the appropriate federal regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for substance abuse. The regulations do not restrict a disclosure that an identified individual is not and has never received services.</p> <p>(e)1. Since a minor acting alone has the legal capacity to voluntarily apply for and obtain substance abuse treatment, any written consent for disclosure may be given only by the minor. This restriction includes, but is not limited to, any disclosure of identifying information to the parent, legal guardian, or custodian of a minor for the purpose of obtaining financial reimbursement.</p> <p>2. When the consent of a parent, legal guardian, or custodian is required under this chapter in order for a minor to obtain substance abuse treatment, any written consent for disclosure must be given by both the minor and the parent, legal guardian, or custodian.</p> <p>(f) An order of a court of competent jurisdiction authorizing disclosure and use of confidential information is a unique kind of court order. Its only purpose is to authorize a disclosure or use of identifying information which would otherwise be prohibited by this section. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as, and accompany, an authorizing court order entered under this section.</p> <p>(g) An order authorizing the disclosure of an individual's records may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the individual's records are needed to provide evidence. An application must use a fictitious name, such as John Doe or Jane Doe, to refer to any individual and may not contain or otherwise disclose any identifying information unless the individual is the applicant or has given a written consent to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.</p> <p>(h) The individual and the person holding the records from whom disclosure is sought must be given adequate notice in a manner which will not disclose identifying information to other persons, and an opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.</p> <p>(i) Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that identifying information is not disclosed to anyone other than a party to the proceeding, the individual, or the person holding the record, unless the individual requests an open hearing. The proceeding may include an examination by the judge of the records referred to in the application.</p> <p>(j) A court may authorize the disclosure and use of records for the purpose of conducting a criminal investigation or prosecution of an individual only if the court finds that all of the following criteria are met:</p> <ol style="list-style-type: none"> <li>1. The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury, including but not limited to homicide, sexual assault, sexual battery, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.</li> <li>2. There is reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.</li> <li>3. Other ways of obtaining the information are not available or would not be effective.</li> <li>4. The potential injury to the individual, to the physician-individual relationship, and to the ability of the program to provide services to other individuals is outweighed by the public interest and the need for the disclosure.</li> </ol> <p>(8) <b>RIGHT TO COUNSEL.</b>—Each individual must be informed that he or she has the right to be represented by counsel in any involuntary proceeding for assessment, stabilization, or treatment and that he or she, or if the individual is a minor his or her parent, legal guardian, or legal custodian, may apply immediately to the court to have an attorney appointed if he or she cannot afford one.</p> <p>(9) <b>RIGHT TO HABEAS CORPUS.</b>—At any time, and without notice, an individual involuntarily retained by a provider, or the individual's parent, guardian, custodian, or attorney on behalf of the individual, may petition for a writ of habeas corpus to question the cause and legality of such retention and request that the court issue a writ for the individual's release.</p> <p>(10) <b>LIABILITY AND IMMUNITY.</b>—</p> <ol style="list-style-type: none"> <li>(a) Service provider personnel who violate or abuse any right or privilege of an individual under this chapter are liable for damages as determined by law.</li> <li>(b) All persons acting in good faith, reasonably, and without negligence in connection with the preparation or execution of petitions, applications, certificates, or other documents or the apprehension, detention, discharge, examination, transportation, or treatment of a person under the provisions of this chapter shall be free from all liability, civil or criminal, by reason of such acts.</li> </ol> |
| <p>Fla. Stat.<br/>§397.501(7)</p> | <p><b>RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.</b>—</p> <p>(a) The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with this chapter and with applicable federal confidentiality regulations and are exempt from s. <a href="#">119.07</a>(1) and s. 24(a), Art. I of the State Constitution. Such records may not be disclosed without the written consent of the individual to whom they pertain except that appropriate disclosure may be made without such consent:</p> <ol style="list-style-type: none"> <li>1. To medical personnel in a medical emergency.</li> <li>2. To service provider personnel if such personnel need to know the information in order to carry out duties relating to the provision of services to an individual.</li> <li>3. To the secretary of the department or the secretary's designee, for purposes of scientific research, in accordance with federal confidentiality regulations, but only upon agreement in writing that the individual's name and other identifying information will not be disclosed.</li> <li>4. In the course of review of service provider records by persons who are performing an audit or evaluation on behalf of any federal, state, or local government agency, or third-party payor providing financial assistance or reimbursement to the service provider; however, reports produced as a result of such audit or evaluation may not disclose names or other identifying</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             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|                           | <p>information and must be in accordance with federal confidentiality regulations.</p> <p>5. Upon court order based on application showing good cause for disclosure. In determining whether there is good cause for disclosure, the court shall examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself.</p> <p>(b) The restrictions on disclosure and use in this section do not apply to communications from provider personnel to law enforcement officers which:</p> <ol style="list-style-type: none"> <li>1. Are directly related to an individual's commission of a crime on the premises of the provider or against provider personnel or to a threat to commit such a crime; and</li> <li>2. Are limited to the circumstances of the incident, including the status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.</li> </ol> <p>(c) The restrictions on disclosure and use in this section do not apply to the reporting of incidents of suspected child abuse and neglect to the appropriate state or local authorities as required by law. However, such restrictions continue to apply to the original substance abuse records maintained by the provider, including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.</p> <p>(d) Any answer to a request for a disclosure of individual records which is not permissible under this section or under the appropriate federal regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for substance abuse. The regulations do not restrict a disclosure that an identified individual is not and has never received services.</p> <p>(e)1. Since a minor acting alone has the legal capacity to voluntarily apply for and obtain substance abuse treatment, any written consent for disclosure may be given only by the minor. This restriction includes, but is not limited to, any disclosure of identifying information to the parent, legal guardian, or custodian of a minor for the purpose of obtaining financial reimbursement.</p> <p>2. When the consent of a parent, legal guardian, or custodian is required under this chapter in order for a minor to obtain substance abuse treatment, any written consent for disclosure must be given by both the minor and the parent, legal guardian, or custodian.</p> <p>(f) An order of a court of competent jurisdiction authorizing disclosure and use of confidential information is a unique kind of court order. Its only purpose is to authorize a disclosure or use of identifying information which would otherwise be prohibited by this section. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as, and accompany, an authorizing court order entered under this section.</p> <p>(g) An order authorizing the disclosure of an individual's records may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the individual's records are needed to provide evidence. An application must use a fictitious name, such as John Doe or Jane Doe, to refer to any individual and may not contain or otherwise disclose any identifying information unless the individual is the applicant or has given a written consent to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.</p> <p>(h) The individual and the person holding the records from whom disclosure is sought must be given adequate notice in a manner which will not disclose identifying information to other persons, and an opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.</p> <p>(i) Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that identifying information is not disclosed to anyone other than a party to the proceeding, the individual, or the person holding the record, unless the individual requests an open hearing. The proceeding may include an examination by the judge of the records referred to in the application.</p> <p>(j) A court may authorize the disclosure and use of records for the purpose of conducting a criminal investigation or prosecution of an individual only if the court finds that all of the following criteria are met:</p> <ol style="list-style-type: none"> <li>1. The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury, including but not limited to homicide, sexual assault, sexual battery, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.</li> <li>2. There is reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.</li> <li>3. Other ways of obtaining the information are not available or would not be effective.</li> <li>4. The potential injury to the individual, to the physician-individual relationship, and to the ability of the program to provide services to other individuals is outweighed by the public interest and the need for the disclosure.</li> </ol> |
| <p>Fla. Stat. §406.11</p> | <p>Examinations, investigations, and autopsies.—</p> <p>(1) In any of the following circumstances involving the death of a human being, the medical examiner of the district in which the death occurred or the body was found shall determine the cause of death and shall, for that purpose, make or have performed such examinations, investigations, and autopsies as he or she shall deem necessary or as shall be requested by the state attorney:</p> <p>(a) When any person dies in the state:</p> <ol style="list-style-type: none"> <li>1. Of criminal violence.</li> <li>2. By accident.</li> <li>3. By suicide.</li> <li>4. Suddenly, when in apparent good health.</li> <li>5. Unattended by a practicing physician or other recognized practitioner.</li> <li>6. In any prison or penal institution.</li> <li>7. In police custody.</li> <li>8. In any suspicious or unusual circumstance.</li> <li>9. By criminal abortion.</li> <li>10. By poison.</li> <li>11. By disease constituting a threat to public health.</li> <li>12. By disease, injury, or toxic agent resulting from employment.</li> </ol> <p>(b) When a dead body is brought into the state without proper medical certification.</p> <p>(c) When a body is to be cremated, dissected, or buried at sea.</p> <p>(2)(a) The district medical examiner shall have the authority in any case coming under subsection (1) to perform, or have performed, whatever autopsies or laboratory examinations he or she deems necessary and in the public interest to determine the</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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|                     | <p>identification of or cause or manner of death of the deceased or to obtain evidence necessary for forensic examination.</p> <p>(b) The Medical Examiners Commission shall adopt rules, pursuant to chapter 120, providing for the notification of the next of kin that an investigation by the medical examiner's office is being conducted. A medical examiner may not retain or furnish any body part of the deceased for research or any other purpose which is not in conjunction with a determination of the identification of or cause or manner of death of the deceased or the presence of disease or which is not otherwise authorized by this chapter, part V of chapter 765, or chapter 873, without notification of and approval by the next of kin.</p> <p>(3) The Medical Examiners Commission may adopt rules incorporating by reference parameters or guidelines of practice or standards of conduct relating to examinations, investigations, or autopsies performed by medical examiners.</p>                                                                                                                                                                                                                                                                                                                                                                       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| Fla. Stat. §406.12  | <p>Duty to report; prohibited acts.—It is the duty of any person in the district where a death occurs, including all municipalities and unincorporated and federal areas, who becomes aware of the death of any person occurring under the circumstances described in s. <a href="#">406.11</a> to report such death and circumstances forthwith to the district medical examiner. Any person who knowingly fails or refuses to report such death and circumstances, who refuses to make available prior medical or other information pertinent to the death investigation, or who, without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. <a href="#">775.082</a> or s. <a href="#">775.083</a>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                        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| Fla. Stat. §408.061 | <p>Data collection; uniform systems of financial reporting; information relating to physician charges; confidential information; immunity.—</p> <p>(1) The agency shall require the submission by health care facilities, health care providers, and health insurers of data necessary to carry out the agency's duties. Specifications for data to be collected under this section shall be developed by the agency with the assistance of technical advisory panels including representatives of affected entities, consumers, purchasers, and such other interested parties as may be determined by the agency.</p> <p>(a) Data submitted by health care facilities, including the facilities as defined in chapter 395, shall include, but are not limited to: case-mix data, patient admission and discharge data, hospital emergency department data which shall include the number of patients treated in the emergency department of a licensed hospital reported by patient acuity level, data on hospital-acquired infections as specified by rule, data on complications as specified by rule, data on readmissions as specified by rule, with patient and provider-specific identifiers included, actual charge data by diagnostic groups, financial data, accounting data, operating expenses, expenses incurred for rendering services to patients who cannot or do not pay, interest charges, depreciation expenses based on the expected useful life of the property and equipment involved, and demographic data. The agency shall adopt nationally recognized risk adjustment methodologies or software consistent with the standards of the Agency for Healthcare Research and Quality and as selected by the agency for all data submitted as required by this section. Data may be obtained from documents such as, but not limited to: leases, contracts, debt instruments, itemized patient bills, medical record abstracts, and related diagnostic information. Reported data elements shall be reported electronically in accordance with rule 59E-7.012, Florida Administrative Code. Data submitted shall be certified by the chief executive officer or an appropriate and duly authorized representative or employee of the licensed facility that the information submitted is true and accurate.</p> <p>(b) Data to be submitted by health care providers may include, but are not limited to: professional organization and specialty board affiliations, Medicare and Medicaid participation, types of services offered to patients, amount of revenue and expenses of the health care provider, and such other data which are reasonably necessary to study utilization patterns. Data submitted shall be certified by the appropriate duly authorized representative or employee of the health care provider that the information submitted is true and accurate.</p> <p>(c) Data to be submitted by health insurers may include, but are not limited to: claims, premium, administration, and financial information. Data submitted shall be certified by the chief financial officer, an appropriate and duly authorized representative, or an employee of the insurer that the information submitted is true and accurate.</p> <p>(d) Data required to be submitted by health care facilities, health care providers, or health insurers shall not include specific provider contract reimbursement information. However, such specific provider reimbursement data shall be reasonably available for onsite inspection by the agency as is necessary to carry out the agency's regulatory duties. Any such data obtained by the agency as a result of onsite inspections may not be used by the state for purposes of direct provider contracting and are confidential and exempt from the provisions of s. <a href="#">119.07</a>(1) and s. 24(a), Art. I of the State Constitution.</p> <p>(e) A requirement to submit data shall be adopted by rule if the submission of data is being required of all members of any type of health care facility, health care provider, or health insurer. Rules are not required, however, for the submission of data for a special study mandated by the Legislature or when information is being requested for a single health care facility, health care provider, or health insurer.</p> <p>(2) The agency shall, by rule, after consulting with appropriate professional and governmental advisory bodies and holding public hearings and considering existing and proposed systems of accounting and reporting utilized by health care facilities, specify a uniform system of financial reporting for each type of facility based on a uniform chart of accounts developed after considering any chart of accounts developed by the national association for such facilities and generally accepted accounting principles. Such systems shall, to the extent feasible, use existing accounting systems and shall minimize the paperwork required of facilities. This provision shall not be construed to authorize the agency to require health care facilities to adopt a uniform accounting system. As a part of such uniform system of financial reporting, the agency may require the filing of any information relating to the cost to the provider and the charge to the consumer of any service provided in such facility, except the cost of a physician's services which is billed independently of the facility.</p> <p>(3) When more than one licensed facility is operated by the reporting organization, the information required by this section shall be reported for each facility separately.</p> <p>(4) Within 120 days after the end of its fiscal year, each health care facility, excluding continuing care facilities and nursing homes as defined in s. <a href="#">408.07</a>(14) and (37), shall file with the agency, on forms adopted by the agency and based on the uniform system of financial reporting, its actual financial experience for that fiscal year, including expenditures, revenues, and statistical measures. Such data may be based on internal financial reports which are certified to be complete and accurate by the provider. However, hospitals' actual financial experience shall be their audited actual experience. Every nursing home shall submit to the agency, in a format designated by the agency, a statistical profile of the nursing home residents. The agency, in conjunction with the Department of Elderly Affairs and the Department of Health, shall review these statistical profiles and develop recommendations for the types of residents who might more appropriately be placed in their homes or other noninstitutional settings.</p> <p>(5) In addition to information submitted in accordance with subsection (4), each nursing home shall track and file with the agency, on a form adopted by the agency, data related to each resident's admission, discharge, or conversion to Medicaid; health and functional status; plan of care; and other information pertinent to the resident's placement in a nursing home.</p> |



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|                                        | <p>(6) The agency may require other reports based on the uniform system of financial reporting necessary to accomplish the purposes of this chapter.</p> <p>(7) Portions of patient records obtained or generated by the agency containing the name, residence or business address, telephone number, social security or other identifying number, or photograph of any person or the spouse, relative, or guardian of such person, or any other identifying information which is patient-specific or otherwise identifies the patient, either directly or indirectly, are confidential and exempt from the provisions of s. <a href="#">119.07(1)</a> and s. 24(a), Art. I of the State Constitution.</p> <p>(8) The identity of any health care provider, health care facility, or health insurer who submits any data which is proprietary business information to the agency pursuant to the provisions of this section shall remain confidential and exempt from the provisions of s. <a href="#">119.07(1)</a> and s. 24(a), Art. I of the State Constitution. As used in this section, “proprietary business information” shall include, but not be limited to, information relating to specific provider contract reimbursement information; information relating to security measures, systems, or procedures; and information concerning bids or other contractual data, the disclosure of which would impair efforts to contract for goods or services on favorable terms or would injure the affected entity’s ability to compete in the marketplace. Notwithstanding the provisions of this subsection, any information obtained or generated pursuant to the provisions of former s. <a href="#">407.61</a>, either by the former Health Care Cost Containment Board or by the Agency for Health Care Administration upon transfer to that agency of the duties and functions of the former Health Care Cost Containment Board, is not confidential and exempt from the provisions of s. <a href="#">119.07(1)</a> and s. 24(a), Art. I of the State Constitution. Such proprietary business information may be used in published analyses and reports or otherwise made available for public disclosure in such manner as to preserve the confidentiality of the identity of the provider. This exemption shall not limit the use of any information used in conjunction with investigation or enforcement purposes under the provisions of s. <a href="#">456.073</a>.</p> <p>(9) No health care facility, health care provider, health insurer, or other reporting entity or its employees or agents shall be held liable for civil damages or subject to criminal penalties either for the reporting of patient data to the agency or for the release of such data by the agency as authorized by this chapter.</p> <p>(10) The agency shall be the primary source for collection and dissemination of health care data. No other agency of state government may gather data from a health care provider licensed or regulated under this chapter without first determining if the data is currently being collected by the agency and affirmatively demonstrating that it would be more cost-effective for an agency of state government other than the agency to gather the health care data. The secretary shall ensure that health care data collected by the divisions within the agency is coordinated. It is the express intent of the Legislature that all health care data be collected by a single source within the agency and that other divisions within the agency, and all other agencies of state government, obtain data for analysis, regulation, and public dissemination purposes from that single source. Confidential information may be released to other governmental entities or to parties contracting with the agency to perform agency duties or functions as needed in connection with the performance of the duties of the receiving entity. The receiving entity or party shall retain the confidentiality of such information as provided for herein.</p> <p>(11) The agency shall cooperate with local health councils and the state health planning agency with regard to health care data collection and dissemination and shall cooperate with state agencies in any efforts to establish an integrated health care database.</p> <p>(12) It is the policy of this state that philanthropic support for health care should be encouraged and expanded, especially in support of experimental and innovative efforts to improve the health care delivery system.</p> <p>(13) For purposes of determining reasonable costs of services furnished by health care facilities, unrestricted grants, gifts, and income from endowments shall not be deducted from any operating costs of such health care facilities, and, in addition, the following items shall not be deducted from any operating costs of such health care facilities:</p> <p>(a) An unrestricted grant or gift, or income from such a grant or gift, which is not available for use as operating funds because of its designation by the health care facility’s governing board.</p> <p>(b) A grant or similar payment which is made by a governmental entity and which is not available, under the terms of the grant or payment, for use as operating funds.</p> <p>(c) The sale or mortgage of any real estate or other capital assets of the health care facility which the health care facility acquired through a gift or grant and which is not available for use as operating funds under the terms of the gift or grant or because of its designation by the health care facility’s governing board, except for recovery of the appropriate share of gains and losses realized from the disposal of depreciable assets.</p> |
| <p>Fla. Stat.<br/>§415.1034(1)-(2)</p> | <p>Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—</p> <p>(1) MANDATORY REPORTING.—</p> <p>(a) Any person, including, but not limited to, any:</p> <ol style="list-style-type: none"> <li>1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;</li> <li>2. Health professional or mental health professional other than one listed in subparagraph 1.;</li> <li>3. Practitioner who relies solely on spiritual means for healing;</li> <li>4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;</li> <li>5. State, county, or municipal criminal justice employee or law enforcement officer;</li> <li>6. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. <a href="#">509.032</a>;</li> <li>7. Florida advocacy council member or long-term care ombudsman council member; or</li> <li>8. Bank, savings and loan, or credit union officer, trustee, or employee,</li> </ol> <p>who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.</p> <p>(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:</p> <ol style="list-style-type: none"> <li>1. Name, age, race, sex, physical description, and location of each victim alleged to have been abused, neglected, or exploited.</li> <li>2. Names, addresses, and telephone numbers of the victim’s family members.</li> <li>3. Name, address, and telephone number of each alleged perpetrator.</li> <li>4. Name, address, and telephone number of the caregiver of the victim, if different from the alleged perpetrator.</li> <li>5. Name, address, and telephone number of the person reporting the alleged abuse, neglect, or exploitation.</li> <li>6. Description of the physical or psychological injuries sustained.</li> <li>7. Actions taken by the reporter, if any, such as notification of the criminal justice agency.</li> <li>8. Any other information available to the reporting person which may establish the cause of abuse, neglect, or exploitation that occurred or is occurring.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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|                                      | <p>(2) <b>MANDATORY REPORTS OF DEATH.</b>—Any person who is required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation shall immediately report the suspicion to the appropriate medical examiner, to the appropriate criminal justice agency, and to the department, notwithstanding the existence of a death certificate signed by a practicing physician. The medical examiner shall accept the report for investigation pursuant to s. <a href="#">406.11</a> and shall report the findings of the investigation, in writing, to the appropriate local criminal justice agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. <a href="#">415.107</a>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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| <p>Fla. Stat. §415.1045(4)(a)(5)</p> | <p><b>MEDICAL, SOCIAL, OR FINANCIAL RECORDS OR DOCUMENTS.</b>—</p> <p>(a) The protective investigator, while investigating a report of abuse, neglect, or exploitation, must have access to, inspect, and copy all medical, social, or financial records or documents in the possession of any person, caregiver, guardian, or facility which are relevant to the allegations under investigation, unless specifically prohibited by the vulnerable adult who has capacity to consent.</p> <p>(5) <b>ACCESS TO RECORDS AND DOCUMENTS.</b>—If any person refuses to allow a law enforcement officer or the protective investigator to have access to, inspect, or copy any medical, social, or financial record or document in the possession of any person, caregiver, guardian, or facility which is relevant to the allegations under investigation, the department may petition the court for an order requiring the person to allow access to the record or document. The petition must allege specific facts sufficient to show that the record or document is relevant to the allegations under investigation and that the person refuses to allow access to such record or document. If the court finds by a preponderance of the evidence that the record or document is relevant to the allegations under investigation, the court may order the person to allow access to and permit the inspection or copying of the medical, social, or financial record or document.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>Fla. Stat. §456.057</p>           | <p>Ownership and control of patient records; report or copies of records to be furnished.—</p> <p>(1) As used in this section, the term “records owner” means any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person; any health care practitioner to whom records are transferred by a previous records owner; or any health care practitioner’s employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner.</p> <p>(2) As used in this section, the terms “records owner,” “health care practitioner,” and “health care practitioner’s employer” do not include any of the following persons or entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:</p> <ol style="list-style-type: none"> <li>(a) Certified nursing assistants regulated under part II of chapter 464.</li> <li>(b) Pharmacists and pharmacies licensed under chapter 465.</li> <li>(c) Dental hygienists licensed under s. <a href="#">466.023</a>.</li> <li>(d) Nursing home administrators licensed under part II of chapter 468.</li> <li>(e) Respiratory therapists regulated under part V of chapter 468.</li> <li>(f) Athletic trainers licensed under part XIII of chapter 468.</li> <li>(g) Electrologists licensed under chapter 478.</li> <li>(h) Clinical laboratory personnel licensed under part III of chapter 483.</li> <li>(i) Medical physicists licensed under part IV of chapter 483.</li> <li>(j) Opticians and optical establishments licensed or permitted under part I of chapter 484.</li> <li>(k) Persons or entities practicing under s. <a href="#">627.736(7)</a>.</li> </ol> <p>(3) As used in this section, the term “records custodian” means any person or entity that:</p> <ol style="list-style-type: none"> <li>(a) Maintains documents that are authorized in subsection (2); or</li> <li>(b) Obtains medical records from a records owner.</li> </ol> <p>(4) Any health care practitioner’s employer who is a records owner and any records custodian shall maintain records or documents as provided under the confidentiality and disclosure requirements of this section.</p> <p>(5) This section does not apply to facilities licensed under chapter 395.</p> <p>(6) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person’s legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient’s psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient’s legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient’s written request, complete copies of the patient’s psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.</p> <p>(7)(a) Except as otherwise provided in this section and in s. <a href="#">440.13(4)(c)</a>, such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient’s legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. However, such records may be furnished without written authorization under the following circumstances:</p> <ol style="list-style-type: none"> <li>1. To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient’s consent.</li> <li>2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.</li> <li>3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient’s legal representative by the party seeking such records.</li> <li>4. For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient’s legal representative.</li> <li>5. To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. <a href="#">395.1027</a> and the professional organization that certifies poison control centers in accordance with federal law.</li> </ol> <p>(b) Absent a specific written release or authorization permitting utilization of patient information for solicitation or marketing the sale of goods or services, any use of that information for those purposes is prohibited.</p> <p>(8) Except in a medical negligence action or administrative proceeding when a health care practitioner or provider is or</p> |

reasonably expects to be named as a defendant, information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care practitioners and providers involved in the care or treatment of the patient, or if permitted by written authorization from the patient or compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given.

(9)(a)1. The department may obtain patient records pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of this chapter or any professional practice act or that a health care practitioner has practiced his or her profession below that level of care, skill, and treatment required as defined by this chapter or any professional practice act and also find that appropriate, reasonable attempts were made to obtain a patient release. Notwithstanding the foregoing, the department need not attempt to obtain a patient release when investigating an offense involving the inappropriate prescribing, overprescribing, or diversion of controlled substances and the offense involves a pain-management clinic. The department may obtain patient records without patient authorization or subpoena from any pain-management clinic required to be licensed if the department has probable cause to believe that a violation of any provision of s. [458.3265](#) or s. [459.0137](#) is occurring or has occurred and reasonably believes that obtaining such authorization is not feasible due to the volume of the dispensing and prescribing activity involving controlled substances and that obtaining patient authorization or the issuance of a subpoena would jeopardize the investigation.

2. The department may obtain patient records and insurance information pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has provided inadequate medical care based on termination of insurance and also find that appropriate, reasonable attempts were made to obtain a patient release.

3. The department may obtain patient records, billing records, insurance information, provider contracts, and all attachments thereto pursuant to a subpoena without written authorization from the patient if the department and probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has submitted a claim, statement, or bill using a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed, requested payment for services that were not performed by that health care practitioner, used information derived from a written report of an automobile accident generated pursuant to chapter 316 to solicit or obtain patients personally or through an agent regardless of whether the information is derived directly from the report or a summary of that report or from another person, solicited patients fraudulently, received a kickback as defined in s. [456.054](#), violated the patient brokering provisions of s. [817.505](#), or presented or caused to be presented a false or fraudulent insurance claim within the meaning of s. [817.234\(1\)\(a\)](#), and also find that, within the meaning of s. [817.234\(1\)\(a\)](#), patient authorization cannot be obtained because the patient cannot be located or is deceased, incapacitated, or suspected of being a participant in the fraud or scheme, and if the subpoena is issued for specific and relevant records.

4. Notwithstanding subparagraphs 1.-3., when the department investigates a professional liability claim or undertakes action pursuant to s. [456.049](#) or s. [627.912](#), the department may obtain patient records pursuant to a subpoena without written authorization from the patient if the patient refuses to cooperate or if the department attempts to obtain a patient release and the failure to obtain the patient records would be detrimental to the investigation.

(b) Patient records, billing records, insurance information, provider contracts, and all attachments thereto obtained by the department pursuant to this subsection shall be used solely for the purpose of the department and the appropriate regulatory board in disciplinary proceedings. This section does not limit the assertion of the psychotherapist-patient privilege under s. [90.503](#) in regard to records of treatment for mental or nervous disorders by a medical practitioner licensed pursuant to chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency. However, the health care practitioner shall release records of treatment for medical conditions even if the health care practitioner has also treated the patient for mental or nervous disorders. If the department has found reasonable cause under this section and the psychotherapist-patient privilege is asserted, the department may petition the circuit court for an in camera review of the records by expert medical practitioners appointed by the court to determine if the records or any part thereof are protected under the psychotherapist-patient privilege.

(10)(a) All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. [119.07\(1\)](#) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.

(b) Notwithstanding paragraph (a), all patient records obtained by the department and any other documents maintained by the department which relate to a current or former Medicaid recipient shall be provided to the Medicaid Fraud Control Unit in the Department of Legal Affairs, upon request.

(11) All records owners shall develop and implement policies, standards, and procedures to protect the confidentiality and security of the medical record. Employees of records owners shall be trained in these policies, standards, and procedures.

(12) Records owners are responsible for maintaining a record of all disclosures of information contained in the medical record to a third party, including the purpose of the disclosure request. The record of disclosure may be maintained in the medical record. The third party to whom information is disclosed is prohibited from further disclosing any information in the medical record without the expressed written consent of the patient or the patient's legal representative.

(13) Notwithstanding the provisions of s. [456.058](#), records owners shall place an advertisement in the local newspaper or notify patients, in writing, when they are terminating practice, retiring, or relocating, and no longer available to patients, and offer patients the opportunity to obtain a copy of their medical record.

(14) Notwithstanding the provisions of s. [456.058](#), records owners shall notify the appropriate board office when they are terminating practice, retiring, or relocating, and no longer available to patients, specifying who the new records owner is and where medical records can be found.

(15) Whenever a records owner has turned records over to a new records owner, the new records owner shall be responsible for providing a copy of the complete medical record, upon written request, of the patient or the patient's legal representative.

(16) Licensees in violation of the provisions of this section shall be disciplined by the appropriate licensing authority.

(17) The Attorney General is authorized to enforce the provisions of this section for records owners not otherwise licensed by the state, through injunctive relief and fines not to exceed \$5,000 per violation.

(18) A health care practitioner or records owner furnishing copies of reports or records or making the reports or records available for digital scanning pursuant to this section shall charge no more than the actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate board, or the department when there is no board.

(19) Nothing in this section shall be construed to limit health care practitioner consultations, as necessary.

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|                      | <p>(20) A records owner shall release to a health care practitioner who, as an employee of the records owner, previously provided treatment to a patient, those records that the health care practitioner actually created or generated when the health care practitioner treated the patient. Records released pursuant to this subsection shall be released only upon written request of the health care practitioner and shall be limited to the notes, plans of care, and orders and summaries that were actually generated by the health care practitioner requesting the record.</p> <p>(21) The board, or department when there is no board, may temporarily or permanently appoint a person or entity as a custodian of medical records in the event of the death of a practitioner, the mental or physical incapacitation of the practitioner, or the abandonment of medical records by a practitioner. The custodian appointed shall comply with all provisions of this section, including the release of patient records.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Fla. Stat. §456.059  | <p>Communications confidential; exceptions.—Communications between a patient and a psychiatrist, as defined in s. 394.455, shall be held confidential and shall not be disclosed except upon the request of the patient or the patient’s legal representative. Provision of psychiatric records and reports shall be governed by s. 456.057. Notwithstanding any other provision of this section or s. 90.503, where:</p> <p>(1) A patient is engaged in a treatment relationship with a psychiatrist;</p> <p>(2) Such patient has made an actual threat to physically harm an identifiable victim or victims; and</p> <p>(3) The treating psychiatrist makes a clinical judgment that the patient has the apparent capability to commit such an act and that it is more likely than not that in the near future the patient will carry out that threat,</p> <p>the psychiatrist may disclose patient communications to the extent necessary to warn any potential victim or to communicate the threat to a law enforcement agency. No civil or criminal action shall be instituted, and there shall be no liability on account of disclosure of otherwise confidential communications by a psychiatrist in disclosing a threat pursuant to this section.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Fla. Stat. §491.0147 | <p>Confidentiality and privileged communications.—Any communication between any person licensed or certified under this chapter and her or his patient or client shall be confidential. This secrecy may be waived under the following conditions:</p> <p>(1) When the person licensed or certified under this chapter is a party defendant to a civil, criminal, or disciplinary action arising from a complaint filed by the patient or client, in which case the waiver shall be limited to that action.</p> <p>(2) When the patient or client agrees to the waiver, in writing, or, when more than one person in a family is receiving therapy, when each family member agrees to the waiver, in writing.</p> <p>(3) When, in the clinical judgment of the person licensed or certified under this chapter, there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society and the person licensed or certified under this chapter communicates the information only to the potential victim, appropriate family member, or law enforcement or other appropriate authorities. There shall be no liability on the part of, and no cause of action of any nature shall arise against, a person licensed or certified under this chapter for the disclosure of otherwise confidential communications under this subsection.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Fla. Stat. §542.28   | <p>Civil investigative demand.—</p> <p>(1) Whenever the Attorney General, or a state attorney with appropriate jurisdiction and with the written consent of the Attorney General, has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, which documentary material or information is relevant to a civil antitrust investigation authorized by s. 542.27(3), the Attorney General or such state attorney may, prior to the institution of a civil or criminal proceeding thereon, issue in writing and cause to be served upon such person a civil investigative demand requiring such person to:</p> <p>(a) Produce such documentary material for inspection and copying or reproduction;</p> <p>(b) Answer, under oath and in writing, written interrogatories;</p> <p>(c) Give sworn oral testimony concerning the documentary material or information; or</p> <p>(d) Furnish any combination of such material, answers, or testimony.</p> <p>(2) The demand shall:</p> <p>(a) Be served upon the person in the manner required for service of process in this state or by certified mail showing receipt by the addressee or by the authorized agent of the addressee.</p> <p>(b) State the nature of the conduct which constitutes the violation of this chapter or of the federal antitrust laws and which is alleged to have occurred or to be imminent.</p> <p>(c) Describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such materials to be reasonably identified.</p> <p>(d) Prescribe a date and time at which the person must appear to testify, under oath or affirmation, or by which the person must answer written interrogatories or produce the documentary material for inspection or copying; however, such date shall not be earlier than 30 days from the date of service of the investigative demand.</p> <p>(e) Specify a place for the taking of testimony or for the submission of answers to interrogatories and identify the person who is to take custody of any documentary material. Inspection and copying of documentary material shall be carried out at the place where the documentary material is located or at such other place as may be thereafter agreed to by the person and such designated custodian. Upon written agreement between the person and the designated custodian, copies may be substituted for original documents.</p> <p>(3) No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:</p> <p>(a) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state in aid of a grand jury investigation; or</p> <p>(b) The standards applicable to a discovery request under the Florida Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this chapter.</p> <p>(4) Nothing in this section, however, shall limit the power of the Attorney General or a state attorney to require the appearance of witnesses or production of documents or other tangible evidence located outside the state.</p> <p>(5) Within 30 days after the service of an investigative demand upon any person or at any time before the return date specified therein, whichever period is longer, the person served may file in the circuit court in and for the county in which the person resides or transacts business, and serve upon the Attorney General or state attorney, a petition for an order of the court modifying or setting aside the demand. The time allowed for compliance in whole or in part with the demand as deemed proper and ordered by the court shall not run while the petition is pending before the court. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon the failure of the demand to comply with the provisions of this chapter or upon any constitutional or other legal right or privilege of such person.</p> <p>(6) In case of the failure of any person to comply in whole or in part with a written investigative demand and when such person has not filed a petition under subsection (5), any circuit court of this state, upon application of the Attorney General or state</p> |



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|                     | <p>attorney, may issue an order requiring compliance. The failure to obey the order of the court shall be punishable as a contempt of court.</p> <p>(7) The examination of all witnesses under this section shall be conducted by the Attorney General, or a state attorney with appropriate jurisdiction, before an officer authorized to administer oaths in this state. The testimony shall be taken stenographically or by a sound-recording device. Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for any such objection. If such person refuses to answer any question, the person conducting the examination may petition the circuit court as provided by subsection (11).</p> <p>(8) When the testimony is fully transcribed, the person conducting the deposition shall afford the witness, and counsel if any, a reasonable opportunity to examine the transcript, and the transcript shall be read to or by the witness, unless such examination and reading is waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer, the Attorney General, or a state attorney, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness unless the witness waives the signing in writing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days of his or her being afforded a reasonable opportunity to examine it, the person conducting the examination shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or refusal to sign, together with the reason, if any, given therefor. Any person required to testify or to submit documentary evidence is entitled, on payment of reasonable costs, to procure a copy of any document produced by such person and of his or her own testimony as stenographically reported or, in the case of a deposition, as reduced to writing by or under the direction of the person taking the deposition.</p> <p>(9) Notwithstanding s. <a href="#">119.07</a>(1), it is the duty of the Attorney General or a state attorney to maintain the secrecy of all evidence, testimony, documents, work product, or other results of such investigative demand. However, the Attorney General or state attorney may disclose such investigative evidence to:</p> <p>(a) Any court or tribunal in this state; or</p> <p>(b) Other law enforcement authorities of the Federal Government or other state governments that have restrictions governing confidentiality similar to those contained in this subsection.</p> <p>(10) The Attorney General shall have the authority to stipulate to protective orders with respect to documents and information submitted in response to an investigative demand under this section.</p> <p>(11) The Attorney General or a state attorney may request that any natural person who refuses to comply with any provisions of this section on the ground that the testimony or documents may incriminate him or her be ordered by the circuit court to provide the testimony or the documents. Except in a prosecution for perjury, a natural person who complies with a court order to provide testimony or documents after asserting a privilege against self-incrimination to which he or she is entitled by law may not be subject to a criminal proceeding or to the civil penalty of s. <a href="#">542.21</a>(1), with respect to the transaction to which he or she is required to testify or produce documents. Any natural person who fails to comply with such a court order to testify or produce documents may be adjudged in contempt and imprisoned until the time the person purges himself or herself of the contempt.</p> <p>(12) While in the possession of the custodian, documentary material, answers to interrogatories, and transcripts of oral testimony shall be available, under such reasonable terms and conditions as the Attorney General or a state attorney shall prescribe, for examination by the person who produced such materials or answers, or that person's duly authorized representative.</p> <p>(13) Nothing contained in this section shall impair the authority of the Attorney General or state attorney to:</p> <p>(a) Institute a civil proceeding under s. <a href="#">542.22</a>;</p> <p>(b) Lay before a grand jury of this state evidence concerning a violation of this chapter;</p> <p>(c) Invoke the power of a court to compel the production of evidence before a grand jury; or</p> <p>(d) File a civil complaint or criminal indictment alleging a violation of this chapter.</p> <p>(14)(a) No person, knowing or having reason to believe that a demand pursuant to this section is pending, shall:</p> <p>1. Alter, destroy, conceal, or remove any record, document, or thing with the purpose of impairing its verity or availability in such proceeding or investigation; or</p> <p>2. Make, present, or use any record, document, or thing, knowing it to be false.</p> <p>(b) Any person who violates a provision of this subsection is guilty of a felony of the third degree, punishable as provided in s. <a href="#">775.082</a>, s. <a href="#">775.083</a>, or s. <a href="#">775.084</a>.</p> <p>(15) When copies of documentary material made available pursuant to an investigative demand are no longer required for use in a pending proceeding or, absent any pending proceeding, are no longer required in connection with the investigation for which they were demanded, or at the end of 24 months following the date when the material was made available, whichever is sooner, all copies of the material shall be returned, unless a request to extend the period beyond 24 months has been filed in the court in which a request for an order compelling compliance pursuant to subsection (6) could be filed. This subsection does not require the return of any copies of the documentary material that have passed into the control of any court or grand jury.</p> |
| Fla. Stat. §790.24  | Report of medical treatment of certain wounds; penalty for failure to report.—Any physician, nurse, or employee thereof and any employee of a hospital, sanitarium, clinic, or nursing home knowingly treating any person suffering from a gunshot wound or life-threatening injury indicating an act of violence, or receiving a request for such treatment, shall report the same immediately to the sheriff's department of the county in which said treatment is administered or request therefor received. This section does not affect any requirement that a person has to report abuse pursuant to chapter 39 or chapter 415. Any such person willfully failing to report such treatment or request therefor is guilty of a misdemeanor of the first degree, punishable as provided in s. <a href="#">775.082</a> or s. <a href="#">775.083</a> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      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| Fla. Stat. §794.027 | Duty to report sexual battery; penalties.—A person who observes the commission of the crime of sexual battery and who:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  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|                     | <p>(1) Has reasonable grounds to believe that he or she has observed the commission of a sexual battery;</p> <p>(2) Has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer;</p> <p>(3) Fails to seek such assistance;</p> <p>(4) Would not be exposed to any threat of physical violence for seeking such assistance;</p> <p>(5) Is not the husband, wife, parent, grandparent, child, grandchild, brother, or sister of the offender or victim, by consanguinity or affinity; and</p> <p>(6) Is not the victim of such sexual battery</p>                                                                                                                                                                                                                                                                                                                                                                                      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| Fla. Stat. §877.155 | Report of initial treatment of burn injuries; penalty for failure to report.—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           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|                     | (1) Any person who initially treats or is requested to treat a person with second-degree or third-degree burn injuries affecting 10 percent or more of the surface area of his or her body shall immediately report such treatment to the local sheriff's department if                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          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|                     | <p>the treating person determines that the burns were caused by a flammable substance and if the treating person suspects the injury is a result of violence or unlawful activity. The report shall state the name and address of the injured person and the extent of his or her injuries. This section does not apply to burn injuries received by a member of the armed forces, or by a governmental employee, engaged in the performance of his or her duties.</p> <p>(2) Any person who willfully fails to make the report required by subsection (1) is guilty of a misdemeanor of the first degree, punishable as provided in s. <a href="#">775.082</a> or s. <a href="#">775.083</a>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Fla. Stat. §916.107 | <p>Rights of forensic clients.—</p> <p>(8) <b>CLINICAL RECORD; CONFIDENTIALITY.</b>—A clinical record for each forensic client shall be maintained. The record shall include data pertaining to admission and such other information as may be required under rules of the department or the agency. Unless waived by express and informed consent of the client or the client’s legal guardian or, if the client is deceased, by the client’s personal representative or by that family member who stands next in line of intestate succession or except as otherwise provided in this subsection, the clinical record is confidential and exempt from the provisions of s. <a href="#">119.07(1)</a> and s. <a href="#">24(a)</a>, Art. I of the State Constitution.</p> <p>(a) Such clinical record may be released:</p> <ol style="list-style-type: none"> <li>1. To such persons and agencies as are designated by the client or the client’s legal guardian.</li> <li>2. To persons authorized by order of court and to the client’s counsel when the records are needed by the counsel for adequate representation.</li> <li>3. To a qualified researcher, as defined by rule; a staff member of the facility; or an employee of the department or agency when the administrator of the facility, or secretary or director of the department or agency, deems it necessary for treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.</li> <li>4. For statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.</li> <li>5. If a client receiving services has declared an intention to harm other persons, the administrator shall authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the client, and to the committing court, the state attorney, and the attorney representing the client.</li> <li>6. To the parent or next of kin of a client who is committed to, or is being served by, a facility or program when such information is limited to that person’s service plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved and must comply with all state and federal laws and regulations pertaining to the release of personal health information.</li> </ol> <p>(b) Notwithstanding other provisions of this subsection, the department or agency may request or receive from or provide to any of the following entities client information to facilitate treatment, habilitation, rehabilitation, and continuity of care of any forensic client:</p> <ol style="list-style-type: none"> <li>1. The Social Security Administration and the United States Department of Veterans Affairs;</li> <li>2. Law enforcement agencies, state attorneys, defense attorneys, and judges in regard to the client’s status;</li> <li>3. Jail personnel in the jail in which a client may be housed; and</li> <li>4. Community agencies and others expected to provide followup care to the client upon the client’s return to the community.</li> </ol> <p>(c) The department or agency may provide notice to any client’s next of kin or first representative regarding any serious medical illness or the death of the client.</p> <p>(d)1. Any law enforcement agency, facility, or other governmental agency that receives information pursuant to this subsection shall maintain the confidentiality of such information except as otherwise provided herein.</p> <p>2. Any agency or private practitioner who acts in good faith in releasing information pursuant to this subsection is not subject to civil or criminal liability for such release.</p> |
| Fla. Stat. §937.031 | <p>Dental records of missing persons; access and use.—When a person has been reported missing and has not been located within 30 days after such report, the law enforcement agency conducting the investigation of the missing person shall request the family or next of kin to provide written consent to contact the dentist of the missing person and request that person’s dental records. Notwithstanding the provisions of s. <a href="#">456.057</a>, a dentist, upon receipt of proof of written consent, shall release a copy of the dental records of the missing person to the law enforcement agency requesting such records, providing or encoding the dental records in a form requested by the Department of Law Enforcement. The law enforcement agency shall then enter the dental records into the criminal justice information system for the purpose of comparing such records to those of unidentified deceased persons.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |