

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Fitzenhagen offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsections (9) through (21) of section 456.057, Florida Statutes, are renumbered as subsections (8) through (20), respectively, and present subsections (7) and (8) of that section are amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.-

(7) (a) Except as otherwise provided in this section and in s. 440.13(4) (c), 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 patient's care or treatment ~~of the patient,~~

Amendment No.

17 | except upon written authorization from ~~of~~ the patient. However,  
18 | such records may be furnished without written authorization  
19 | under the following circumstances:

20 |       1. To any person, firm, or corporation that has procured or  
21 | furnished such care ~~examination~~ or treatment with the patient's  
22 | consent.

23 |       2. When compulsory physical examination is made pursuant to  
24 | Rule 1.360, Florida Rules of Civil Procedure, in which case  
25 | copies of the medical records shall be furnished to both the  
26 | defendant and the plaintiff.

27 |       3. In any civil or criminal action, unless otherwise  
28 | prohibited by law, upon the issuance of a subpoena from a court  
29 | of competent jurisdiction and proper notice to the patient or  
30 | the patient's legal representative by the party seeking such  
31 | records.

32 |       4. For statistical and scientific research, provided the  
33 | information is abstracted in such a way as to protect the  
34 | identity of the patient or provided written permission is  
35 | received from the patient or the patient's legal representative.

36 |       5. To a regional poison control center for purposes of  
37 | treating a poison episode under evaluation, case management of  
38 | poison cases, or compliance with data collection and reporting  
39 | requirements of s. 395.1027 and the professional organization  
40 | that certifies poison control centers in accordance with federal  
41 | law.

42 |       (b) Absent a specific written release or authorization  
43 | permitting utilization of patient information for solicitation

Amendment No.

44 or marketing the sale of goods or services, any use of that  
45 information for those purposes is prohibited.

46 ~~(c)(8) Except in a medical negligence action or~~  
47 ~~administrative proceeding when a health care practitioner or~~  
48 ~~provider is or reasonably expects to be named as a defendant,~~  
49 Information disclosed to a health care practitioner by a patient  
50 in the course of the care and treatment of such patient is  
51 confidential and may be disclosed only to other health care  
52 practitioners and providers involved in the care or treatment of  
53 the patient, ~~or~~ if allowed permitted by written authorization  
54 from the patient, or if compelled by subpoena at a deposition,  
55 evidentiary hearing, or trial for which proper notice has been  
56 given.

57 (d) Notwithstanding paragraphs (a)-(c), information  
58 disclosed by a patient to a health care practitioner or provider  
59 or records created by the practitioner or provider during the  
60 course of care or treatment of the patient may be disclosed:

61 1. In a medical negligence action or administrative  
62 proceeding if the health care practitioner or provider is or  
63 reasonably expects to be named as a defendant;

64 2. Pursuant to s. 766.106(6)(b)5.;

65 3. As provided for in the authorization for release of  
66 protected health information filed by the patient pursuant to s.  
67 766.1065; or

68 4. To the health care practitioner's or provider's attorney  
69 during a consultation if the health care practitioner or  
70 provider reasonably expects to be deposed, to be called as a  
71 witness, or to receive formal or informal discovery requests in

Amendment No.

72 a medical negligence action, presuit investigation of medical  
73 negligence, or administrative proceeding.

74 a. If the medical liability insurer of a health care  
75 practitioner or provider described in this subparagraph  
76 represents a defendant or prospective defendant in a medical  
77 negligence action, the attorney representing the nonparty  
78 practitioner or the provider may not, directly or indirectly,  
79 disclose to the insurer any information relating to the  
80 representation of the practitioner or the provider other than  
81 the categories of work performed or the amount of time  
82 applicable to each category for billing or reimbursement  
83 purposes. The attorney representing the nonparty practitioner or  
84 the provider may represent the insurer or other insureds of the  
85 insurer in an unrelated matter.

86 b. The limitations in this subparagraph do not apply if the  
87 attorney reasonably expects the practitioner or provider to be  
88 named as a defendant and the practitioner or provider agrees  
89 with the attorney's assessment, if the practitioner or provider  
90 receives a presuit notice pursuant to chapter 766, or if the  
91 practitioner or provider is named as a defendant.

92 Section 2. Paragraph (b) of subsection (6) of section  
93 766.106, Florida Statutes, is amended to read:

94 766.106 Notice before filing action for medical negligence;  
95 presuit screening period; offers for admission of liability and  
96 for arbitration; informal discovery; review.—

97 (6) INFORMAL DISCOVERY.—

Amendment No.

98 (b) Informal discovery may be used by a party to obtain  
99 unsworn statements, the production of documents or things, and  
100 physical and mental examinations, as follows:

101 1. Unsworn statements.—Any party may require other parties  
102 to appear for the taking of an unsworn statement. Such  
103 statements may be used only for the purpose of presuit screening  
104 and are not discoverable or admissible in any civil action for  
105 any purpose by any party. A party desiring to take the unsworn  
106 statement of any party must give reasonable notice in writing to  
107 all parties. The notice must state the time and place for taking  
108 the statement and the name and address of the party to be  
109 examined. Unless otherwise impractical, the examination of any  
110 party must be done at the same time by all other parties. Any  
111 party may be represented by counsel at the taking of an unsworn  
112 statement. An unsworn statement may be recorded electronically,  
113 stenographically, or on videotape. The taking of unsworn  
114 statements is subject to the provisions of the Florida Rules of  
115 Civil Procedure and may be terminated for abuses.

116 2. Documents or things.—Any party may request discovery of  
117 documents or things. The documents or things must be produced,  
118 at the expense of the requesting party, within 20 days after the  
119 date of receipt of the request. A party is required to produce  
120 discoverable documents or things within that party's possession  
121 or control. Medical records shall be produced as provided in s.  
122 766.204.

123 3. Physical and mental examinations.—A prospective  
124 defendant may require an injured claimant to appear for  
125 examination by an appropriate health care provider. The

921841

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Amendment No.

126 prospective defendant shall give reasonable notice in writing to  
127 all parties as to the time and place for examination. Unless  
128 otherwise impractical, a claimant is required to submit to only  
129 one examination on behalf of all potential defendants. The  
130 practicality of a single examination must be determined by the  
131 nature of the claimant's condition, as it relates to the  
132 liability of each prospective defendant. Such examination report  
133 is available to the parties and their attorneys upon payment of  
134 the reasonable cost of reproduction and may be used only for the  
135 purpose of presuit screening. Otherwise, such examination report  
136 is confidential and exempt from the provisions of s. 119.07(1)  
137 and s. 24(a), Art. I of the State Constitution.

138 4. Written questions.—Any party may request answers to  
139 written questions, the number of which may not exceed 30,  
140 including subparts. A response must be made within 20 days after  
141 receipt of the questions.

142 5. Ex parte interviews of treating health care providers.—A  
143 prospective defendant or his or her legal representative may  
144 interview the claimant's treating health care providers without  
145 notice to or the presence of the claimant or the claimant's  
146 legal representative in accordance with and to the extent  
147 authorized by the authorization for release of protected health  
148 information.

149 ~~6.5.~~ Unsworn statements of treating health care providers.—  
150 A prospective defendant or his or her legal representative may  
151 also take unsworn statements of the claimant's treating health  
152 care providers. The statements must be limited to those areas  
153 that are potentially relevant to the claim of personal injury or

Amendment No.

154 wrongful death. Subject to the procedural requirements of  
155 subparagraph 1., a prospective defendant may take unsworn  
156 statements from a claimant's treating physicians. Reasonable  
157 notice and opportunity to be heard must be given to the claimant  
158 or the claimant's legal representative before taking unsworn  
159 statements. The claimant or claimant's legal representative has  
160 the right to attend the taking of such unsworn statements.

161 Section 3. Subsection (3) of section 766.1065, Florida  
162 Statutes, is amended to read:

163 766.1065 Authorization for release of protected health  
164 information.—

165 (3) The authorization required by this section shall be in  
166 the following form and shall be construed in accordance with the  
167 "Standards for Privacy of Individually Identifiable Health  
168 Information" in 45 C.F.R. parts 160 and 164:

169 AUTHORIZATION FOR RELEASE OF  
170 PROTECTED HEALTH INFORMATION

171 A. I, (...Name of patient or authorized representative...)  
172 [hereinafter "Patient"], authorize that (...Name of health  
173 care provider to whom the presuit notice is directed...)  
174 and his/her/its insurer(s), self-insurer(s), ~~and~~  
175 attorney(s), and the designated treating physicians(s)  
176 listed below and their insurer(s), self-insurer(s), and  
177 attorney(s), may obtain and disclose (within the parameters  
178 set out below) the protected health information described  
179 below for the following specific purposes:

Amendment No.

180 1. Facilitating the investigation and evaluation of the  
181 medical negligence claim described in the accompanying  
182 presuit notice; ~~or~~

183 2. Defending against any litigation arising out of the  
184 medical negligence claim made on the basis of the  
185 accompanying presuit notice; or

186 3. Obtaining legal advice or representation arising out of  
187 the medical negligence claim described in the accompanying  
188 presuit notice.

189 B. The health information obtained, used, or disclosed  
190 extends to, and includes, the verbal as well as the written  
191 and is described as follows:

192 1. The health information in the custody of the following  
193 health care providers who have examined, evaluated, or  
194 treated the Patient in connection with injuries complained  
195 of after the alleged act of negligence: (List the name and  
196 current address of all health care providers). This  
197 authorization extends to any additional health care  
198 providers that may in the future evaluate, examine, or  
199 treat the Patient for the injuries complained of.

200 2. The health information in the custody of the following  
201 health care providers who have examined, evaluated, or  
202 treated the Patient during a period commencing 2 years  
203 before the incident that is the basis of the accompanying  
204 presuit notice.

205 (List the name and current address of such health care  
206 providers, if applicable.)



Amendment No.

207 C. This authorization does not apply to the following list  
208 of health care providers possessing health care information  
209 about the Patient because the Patient certifies that such  
210 health care information is not potentially relevant to the  
211 claim of personal injury or wrongful death that is the  
212 basis of the accompanying presuit notice.

213 (List the name of each health care provider to whom this  
214 authorization does not apply and the inclusive dates of  
215 examination, evaluation, or treatment to be withheld from  
216 disclosure. If none, specify "none.")

217 D. The persons or class of persons to whom the Patient  
218 authorizes such health information to be disclosed or by  
219 whom such health information is to be used:

220 1. Any health care provider providing care or treatment for  
221 the Patient.

222 2. Any liability insurer or self-insurer providing  
223 liability insurance coverage, self-insurance, or defense to  
224 any health care provider to whom presuit notice is given,  
225 or to any health care provider listed in B., above,  
226 regarding the care and treatment of the Patient.

227 3. Any consulting or testifying expert employed by or on  
228 behalf of (name of health care provider to whom presuit  
229 notice was given) and his/her/its insurer(s), self-  
230 insurer(s), or attorney(s) regarding the matter of the  
231 presuit notice accompanying this authorization.

232 4. Any attorney (including the attorney's ~~secretarial,~~  
233 ~~clerical, or paralegal~~ staff) employed by or on behalf of  
234 (name of health care provider to whom presuit notice was

Amendment No.

235 given) , or employed by or on behalf of any health care  
236 provider(s) listed in B., above, regarding the matter of  
237 the presuit notice accompanying this authorization or the  
238 care and treatment of the Patient.

239 5. Any trier of the law or facts relating to any suit filed  
240 seeking damages arising out of the medical care or  
241 treatment of the Patient.

242 E. This authorization expressly permits the persons or  
243 class of persons listed in 2.-4., above, to interview the  
244 health care providers listed in B., above, without notice  
245 to or the presence of the Patient or the Patient's legal  
246 representative. However, notwithstanding the foregoing,  
247 this authorization does not apply to, and no health care  
248 provider is permitted to release or discuss, any  
249 information relating to the lawful ownership, possession,  
250 purchase, or storage of firearms or ammunition by the  
251 Patient or a member of the Patient's family; relating to  
252 the presence of firearms in a private home, other domicile,  
253 vehicle, or business of the Patient or a member of the  
254 Patient's family; or relating to any application for or  
255 possession of a concealed weapon or firearm license by the  
256 Patient or a member of the Patient's family.

257 ~~F.E.~~ This authorization expires upon resolution of the  
258 claim or at the conclusion of any litigation instituted in  
259 connection with the matter of the presuit notice  
260 accompanying this authorization, whichever occurs first.

261 ~~G.F.~~ The Patient understands that, without exception, the  
262 Patient has the right to revoke this authorization in

921841

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Amendment No.

263 writing. The Patient further understands that the  
264 consequence of any such revocation is that the presuit  
265 notice under s. 766.106(2), Florida Statutes, is deemed  
266 retroactively void from the date of issuance, and any  
267 tolling effect that the presuit notice may have had on any  
268 applicable statute-of-limitations period is retroactively  
269 rendered void.

270 ~~H.G.~~ The Patient understands that signing this  
271 authorization is not a condition for continued treatment,  
272 payment, enrollment, or eligibility for health plan  
273 benefits.

274 ~~I.H.~~ The Patient understands that information used or  
275 disclosed under this authorization may be subject to  
276 additional disclosure by the recipient and may not be  
277 protected by federal HIPAA privacy regulations.

278 Signature of Patient/Representative: ....

279 Date: ....

280 Name of Patient/Representative: ....

281 Description of Representative's Authority: ....

282 Section 4. Paragraph (c) of subsection (7) of section  
283 381.028, Florida Statutes, is amended to read:

284 381.028 Adverse medical incidents.—

285 (7) PRODUCTION OF RECORDS.—

286 (c)1. Fees charged by a health care facility for copies of  
287 records requested by a patient under s. 25, Art. X of the State  
288 Constitution may not exceed the reasonable and actual cost of  
289 complying with the request, including a reasonable charge for  
290 the staff time necessary to search for records and prevent the

Amendment No.

291 disclosure of the identity of any patient involved in the  
292 adverse medical incident through redaction or other means as  
293 required by the Health Insurance Portability and Accountability  
294 Act of 1996 or its implementing regulations. The health care  
295 facility may require payment, in full or in part, before acting  
296 on the records request.

297 2. Fees charged by a health care provider for copies of  
298 records requested by a patient under s. 25, Art. X of the State  
299 Constitution may not exceed the amount established under s.  
300 456.057(17) ~~456.057(18)~~, which may include a reasonable charge  
301 for the staff time necessary to prevent the disclosure of the  
302 identity of any patient involved in the adverse medical incident  
303 through redaction or other means as required by the Health  
304 Insurance Portability and Accountability Act of 1996 or its  
305 implementing regulations. The health care provider may require  
306 payment, in full or in part, before acting on the records  
307 request.

308 Section 5. It is the intent of the Legislature to apply the  
309 amendments made by this act to ss. 456.057, 766.106, and  
310 766.1065, Florida Statutes, to prior medical incidents but only  
311 with respect to those prior medical incidents for which the  
312 initial notice of intent to initiate litigation is mailed on or  
313 after the effective date of this act.

314 Section 6. This act shall take effect July 1, 2013.

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316 -----

317 **T I T L E A M E N D M E N T**

318 Remove everything before the enacting clause and insert:

Amendment No.

319                                   A bill to be entitled  
320           An act relating to medical negligence actions;  
321           amending s. 456.057, F.S.; authorizing a health care  
322           practitioner or provider who reasonably expects to be  
323           deposed, to be called as a witness, or to receive  
324           discovery requests to consult with an attorney on  
325           certain matters; authorizing the disclosure of patient  
326           information in connection with litigation under  
327           certain circumstances; restricting the health care  
328           practitioner's or provider's attorney from disclosing  
329           information to the medical liability insurer under  
330           certain circumstances; authorizing the health care  
331           practitioner's or provider's attorney to represent the  
332           insurer or other insureds of the insurer in unrelated  
333           matters; specifying exceptions to the limitations on  
334           disclosures by the attorney to the insurer of the  
335           practitioner or provider; amending s. 766.106, F.S.;  
336           providing that a prospective defendant may conduct an  
337           interview with a claimant's treating health care  
338           provider as a tool of informal discovery; amending s.  
339           766.1065, F.S.; revising the form for the  
340           authorization of release of protected health  
341           information; providing for the release of protected  
342           health information to certain treating health care  
343           providers, insurers, and attorneys; authorizing a  
344           treating health care provider, insurer, or attorney to  
345           use protected health information in connection with  
346           legal services relating to a medical negligence claim;

921841

Approved For Filing: 4/28/2013 11:21:20 PM

Page 13 of 14

Amendment No.

347 | authorizing certain individuals and entities to  
348 | conduct interviews with the claimant's health care  
349 | providers; providing an exception; amending s.  
350 | 381.028, F.S.; conforming a cross-reference to changes  
351 | made by the act; providing for application of the act  
352 | to certain causes of action; providing an effective  
353 | date.