

By the Committee on Health Care

317-1702-98

1 A bill to be entitled
 2 An act relating to confidentiality of records;
 3 providing definitions; providing for the
 4 confidentiality of health, health insurance,
 5 medical, and patient records and for data or
 6 information pertaining to individuals contained
 7 in such records; providing exceptions; amending
 8 s. 455.677, F.S., relating to disposition of
 9 certain medical records held by practitioners;
 10 requiring rules to provide for specific methods
 11 of disposal following expiration of the
 12 mandatory retention period; providing for
 13 alternatives for electronic records; providing
 14 an effective date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. (1) As used in this section, the term:
 19 (a) "Confidential" means private and not for
 20 communication to others, except as provided by law.
 21 (b) "Health record" means data or information,
 22 regardless of the physical form, characteristics, or means of
 23 transmission, concerning the condition of the mind or body of
 24 an individual who participates in a professional relationship
 25 as a patient, client, or customer of a health care
 26 practitioner or health care provider for the receipt of
 27 curative, rehabilitative, therapeutic, cosmetic, or palliative
 28 treatment which data or information is obtained by such a
 29 practitioner or provider as a result of a professional
 30 relationship, professional association, or commercial exchange
 31 with the individual, and which data or information is

1 converted to a medium that results in a record that is
2 maintained as required by law or accepted professional or
3 industry standards and practices.

4 (c) "Health insurance record" means data or
5 information, regardless of the physical form, characteristics,
6 or means of transmission, concerning services, care, or
7 treatment provided to an individual through a professional
8 relationship, professional association, or commercial exchange
9 with a health care practitioner or health care provider
10 relating to health or medical services covered, provided,
11 excluded, or paid on behalf of the individual who is insured
12 by an insurance company or an individual who is a subscriber
13 or an enrollee of a managed care organization which data or
14 information is converted to a medium that results in a record
15 that is maintained as required by law or accepted professional
16 or industry standards and practices.

17 (d) "Medical record" means data or information,
18 regardless of the physical form, characteristics, or means of
19 transmission, concerning the condition of the mind or body of
20 an individual who is a patient, client, or customer of a
21 health care practitioner or health care provider that is
22 obtained by such practitioner or provider as a result of a
23 professional relationship, professional association, or
24 commercial exchange with the individual and which data or
25 information is converted to a medium that results in a record
26 that is maintained as required by law or accepted professional
27 or industry standards and practices.

28 (e) "Patient record" means data or information,
29 regardless of the physical form, characteristics, or means of
30 transmission, concerning the condition of the mind or body of
31 an individual who participates in a professional relationship

1 as a patient, client, or customer of a health care
2 practitioner or health care provider for the receipt of
3 curative, rehabilitative, therapeutic, cosmetic, or palliative
4 treatment which data or information is obtained by such a
5 practitioner or provider as a result of the professional
6 relationship, professional association, or commercial exchange
7 with the individual and which data or information is converted
8 to a medium that results in a record that is maintained as
9 required by law or accepted professional or industry standards
10 and practices.

11 (f) "Record" means all documents, papers, letters,
12 maps, books, tapes, photographs, films, sound recordings, data
13 processing software, or other material, regardless of the
14 physical form, characteristics, or mode of transmission, made
15 or received through a private or public professional
16 relationship, association, or commercial exchange.

17 (g) "Research record" means data or information,
18 regardless of the physical form, characteristics, or means of
19 transmission, concerning an individual which is converted to a
20 medium that preserves the data or information concerning the
21 individual. Such data or information may be:

22 1. Provided to a health researcher by or on behalf of
23 the individual when he or she is a research participant, or in
24 connection with research approved by an Institutional Review
25 Board established in accordance with federal law;

26 2. Reported by a health care practitioner or health
27 care provider to the manufacturer of a drug, biologic, or
28 medical device product in connection with post-marketing
29 surveillance of the safety and efficacy of such manufacturer's
30 drug, biologic, or medical device product, including its use
31 in special populations; or

1 3. Provided voluntarily to a medical or pharmacology
2 researcher as anonymous data or information, in which case
3 personal identifiers have been removed, encrypted, or replaced
4 with a code such that the identity of the individual is not
5 apparent from the facts contained in the data or information,
6 but which may, in the case of encrypted or coded information,
7 permit the identity of the individual to be determined by a
8 person who uses the encryption key or coding system.

9 (2)(a) Except as otherwise provided by law and
10 paragraph (c), health, health insurance, medical, and patient
11 records are confidential and protected as provided under
12 Section 23, Article I of the State Constitution. Access to
13 such records must be granted upon the written consent of the
14 individual to whom the record pertains or the person's legal
15 representative; the written consent of the person who has
16 provided information contained in the record, for that portion
17 of the record provided, or that person's legal representative;
18 pursuant to subpoena, upon demonstration of compelling
19 relevance; or pursuant to order of a court of competent
20 jurisdiction.

21 (b) Except as otherwise provided by law and paragraph
22 (c), any data or information concerning an individual in a
23 health, health insurance, medical, or patient record
24 concerning medical, psychiatric, or surgical care,
25 consultation, counseling, evaluation, testing, or treatment
26 provided to the individual is confidential. Such information
27 may be disclosed to a third party only after written consent
28 has been given by the individual to whom the data or
29 information pertains or the legal representative of the
30 person, a subpoena has been issued upon demonstration of
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1 compelling relevance, or pursuant to order of a court of
2 competent jurisdiction.

3 (c) An insurer or managed care organization may use or
4 disclose records, information, or data made confidential under
5 this subsection to its employees; persons acting on behalf of
6 or at the direction of the insurer or managed care
7 organization for legitimate business purposes; federal or
8 state governmental authorities for financial audits,
9 performance audits, quality-assurance review, utilization
10 review, or investigation or prosecution of fraud, or a
11 violation of laws related to the provision of health care or
12 payment for health care. However, such use or disclosure shall
13 be as narrowly authorized as is necessary to accomplish the
14 legitimate business function for which use or disclosure is
15 determined to be necessary. Legitimate business functions for
16 which records, information, or data made confidential under
17 this subsection may be used or disclosed include: fraud
18 investigation, risk management, quality assurance, utilization
19 review, peer review, patient care, surveys for purposes of
20 accreditation, and processing insurance or managed care
21 organization benefits, claims, and disputes or grievances.

22 (3) Data or information that is obtained, compiled,
23 and maintained as a research record, as provided under this
24 section, shall always retain its confidential and privileged
25 status and may be used only for medical and pharmacological
26 research. Such data or information is not discoverable or
27 admissible in any court or administrative proceeding without
28 the written consent of the individual to whom the record
29 pertains or the individual's legal representative; a subpoena,
30 upon demonstration of compelling relevance; or an order of a
31 court of competent jurisdiction.

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2 This section does not prohibit the disclosure of data or
3 information that is being obtained, compiled, and maintained
4 as a research record, provided that the identity of any
5 individual who participates as a research subject and about
6 whom anonymous data or information is provided or product
7 safety or efficacy data or information is reported as part of
8 post-marketing surveillance is not disclosed in any release of
9 research results or publication of research findings. A
10 researcher that requests data or information protected under
11 this section must pay the actual costs incurred to provide the
12 data or information including, but not limited to, copying
13 charges, postage, and employee time relating to removal of
14 personal identifiers and other activities pertaining to data,
15 information, or record maintenance.

16 Section 2. Section 455.677, Florida Statutes, is
17 amended to read:

18 455.677 Disposition of records of deceased
19 practitioners or practitioners relocating or terminating
20 practice.--Each board created under the provisions of chapter
21 457, chapter 458, chapter 459, chapter 460, chapter 461,
22 chapter 463, chapter 464, chapter 465, chapter 466, part I of
23 chapter 484, chapter 486, chapter 490, or chapter 491, and the
24 department under the provisions of chapter 462, shall provide
25 by rule for the disposition, under that chapter, of the
26 medical records or records of a psychological nature of
27 practitioners which are in existence at the time the
28 practitioner dies, terminates practice, or relocates and is no
29 longer available to patients and which records pertain to the
30 practitioner's patients. The rules shall provide that the
31 records be retained for at least 2 years after the

1 practitioner's death, termination of practice, or relocation.
2 In the case of the death of the practitioner, the rules shall
3 provide for the disposition of such records by the estate of
4 the practitioner. The rules must provide that such records may
5 be disposed of after the mandatory retention period only by
6 delivery to the patient or by shredding or burning in
7 accordance with standards adopted by the department. However,
8 the rules may provide for appropriate alternatives for
9 electronic records, including perpetual archival.

10 Section 3. This act shall take effect upon becoming a
11 law.

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13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 SB 260

16 Definitions for the terms "confidential," "record," and
17 "research record" have been added to the definition section;
18 specific circumstances are listed to which the concept of
19 "legitimate business function," as used in the bill, apply;
20 and the definition of terms already in the bill have been
21 revised. The reference to persons whose interests are
22 protected by the bill is changed from "natural person" to
23 "individual." Insurers and managed care organizations, as well
24 as research records, are expressly excluded from restrictions
25 on confidential information provided in the bill, subject to
26 certain specified guidelines. Researchers are required to pay
27 certain costs resulting from compliance with requests for
28 confidential data and information. The Department of Health is
29 authorized to adopt rules relating to the disposal of patient
30 records that provide for appropriate alternatives for
31 electronic records, including perpetual archival.