

By the Committees on Commerce and Economic Opportunities;
Health, Aging and Long-Term Care; and Senator Mitchell

310-1880-01

1 A bill to be entitled
2 An act relating to medical records; providing
3 legislative findings and intent; amending s.
4 456.057, 395.3025, 400.1415, F.S.; prohibiting
5 the use of a patient's medical records for
6 purposes of solicitation and marketing without
7 specific written release or authorization;
8 providing for criminal penalties; creating s.
9 626.9651, F.S.; requiring the Department of
10 Insurance to adopt rules governing the use of a
11 consumer's nonpublic personal financial and
12 health information; providing standards for the
13 rules; providing an effective date.

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

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17 Section 1. The Legislature finds that personally
18 identifying information, name, age, diagnosis, address, bank
19 account numbers, and debit and credit card numbers contained
20 in the records relating to an individual's personal health or
21 eligibility for health-related services made or received by
22 the individual's physician, pharmacist, and public or private
23 health facility should be held confidential. Furthermore, the
24 Legislature finds that every person has an expectation of and
25 a right to privacy in all matters concerning her or his
26 personal health when medical services are provided. Matters of
27 personal health are traditionally private and confidential
28 concerns between the patient and the health care provider. The
29 private and confidential nature of personal health matters
30 pervades both the public and private sectors. For these
31 reasons, it is the expressed intent of the Legislature to

1 protect confidential information and the individual's
2 expectations of and right to privacy in all matters regarding
3 her or his personal health, and to not have such information
4 exploited for purposes of solicitation or marketing the sale
5 of goods and services.

6 Section 2. Subsection (5) of section 456.057, Florida
7 Statutes, is amended to read:

8 456.057 Ownership and control of patient records;
9 report or copies of records to be furnished.--

10 (5)(a) Except as otherwise provided in this section
11 and in s. 440.13(4)(c), such records may not be furnished to,
12 and the medical condition of a patient may not be discussed
13 with, any person other than the patient or the patient's legal
14 representative or other health care practitioners and
15 providers involved in the care or treatment of the patient,
16 except upon written authorization of the patient. However,
17 such records may be furnished without written authorization
18 under the following circumstances:

19 1.(a) To any person, firm, or corporation that has
20 procured or furnished such examination or treatment with the
21 patient's consent.

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

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

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1 ~~4.(d)~~ For statistical and scientific research,
2 provided the information is abstracted in such a way as to
3 protect the identity of the patient or provided written
4 permission is received from the patient or the patient's legal
5 representative.

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

10 Section 3. Subsection (7) of section 395.3025, Florida
11 Statutes, is amended to read:

12 395.3025 Patient and personnel records; copies;
13 examination.--

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

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

29 Section 4. Subsection (1) of section 400.1415, Florida
30 Statutes, is amended to read:

31 400.1415 Patient records; penalties for alteration.--

1 (1) Any person who fraudulently alters, defaces, or
2 falsifies any medical record or releases medical records for
3 the purposes of solicitation or marketing the sale of goods or
4 services absent a specific written release or authorization
5 permitting utilization of patient information; or other
6 nursing home record, or causes or procures any of these
7 offenses to be committed, commits a misdemeanor of the second
8 degree, punishable as provided in s. 775.082 or s. 775.083.

9 Section 5. Section 626.9651, Florida Statutes, is
10 created to read:

11 626.9651 Privacy.--The department shall adopt rules
12 consistent with other provisions of the Florida Insurance Code
13 to govern the use of a consumer's nonpublic personal financial
14 and health information. These rules must be based on,
15 consistent with, and not more restrictive than the Privacy of
16 Consumer Financial and Health Information Regulation, adopted
17 September 26, 2000, by the National Association of Insurance
18 Commissioners, however, the rules must permit the use and
19 disclosure of nonpublic personal health information for
20 scientific, medical, or public policy research, in accordance
21 with federal law. In addition, these rules must be consistent
22 with, and not more restrictive than, the standards contained
23 in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No.
24 106-102. If the department determines that a health insurer or
25 health maintenance organization is in compliance with, or is
26 actively undertaking compliance with, the consumer privacy
27 protection rules adopted by the United States Department of
28 Health and Human Services, in conformance with the Health
29 Insurance Portability and Affordability Act, that health
30 insurer or health maintenance organization is in compliance
31 with this section.

1 Section 6. This act shall take effect July 1, 2001.

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3 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
4 COMMITTEE SUBSTITUTE FOR
5 CS/SB 2146

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7 The committee substitute directs the Department of Insurance
8 to adopt rules to govern the use of a consumer's nonpublic
9 financial and health information by health insurers and health
10 maintenance organizations consistent with the National
11 Association of Insurance Commissioners' Privacy of Consumer
12 Financial and Health Information Regulation adopted September
13 26, 2000. The committee substitute also requires that these
14 rules be consistent with, and not more restrictive than, the
15 standards contained in Title V of the federal
16 Gramm-Leach-Bliley Act of 1999 (Pub. L. No. 106-102).

17 The committee substitute also makes clarifying and technical
18 revisions to the statement of legislative findings.

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