

By Senator Cowin

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A bill to be entitled

An act relating to health care; creating s. 405.04, F.S.; providing for a medical academic research privilege; amending s. 456.0375, F.S.; redefining the term "clinic" for the purpose of registration with the Department of Health; amending s. 456.072, F.S.; revising grounds for discipline of health care practitioners; amending s. 766.101, F.S.; redefining the term "medical review committee"; providing an effective date.

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

Section 1. Section 405.04, Florida Statutes, is created to read:

405.04 Academic research privilege.--All data, documents, memoranda, including extracts, incident reports, peer-review records and other information that is not otherwise discoverable and that is provided by or to any person or entity, including health care practitioners, hospitals, nursing homes, and academic institutions, in support of any research or study conducted for the purpose of advancing medical research or medical education in the interest of improving patient care or reducing morbidity or mortality, that is otherwise confidential, will remain confidential and not become discoverable simply because of its use for research purposes.

Section 2. Subsection (1) of section 456.0375, Florida Statutes, is amended to read:

1 456.0375 Registration of certain clinics;
2 requirements; discipline; exemptions.--

3 (1)(a) As used in this section, the term "clinic"
4 means a business operating in a single structure or facility,
5 or in a group of adjacent structures or facilities operating
6 under the same business name or management, at which health
7 care services are provided to individuals and which tender
8 charges for reimbursement for such services.

9 (b) For purposes of this section, the term "clinic"
10 does not include and the registration requirements herein do
11 not apply to:

12 1. Entities licensed or registered by the state
13 pursuant to chapter 390, chapter 394, chapter 395, chapter
14 397, chapter 400, chapter 463, chapter 465, chapter 466,
15 chapter 478, chapter 480, or chapter 484.

16 2. Entities exempt from federal taxation under 26
17 U.S.C. s. 501(c)(3), as well as all public universities.

18 3. Sole proprietorships, group practices,
19 partnerships, or corporations that provide health care
20 services by licensed health care practitioners pursuant to
21 chapters 457, 458, 459, 460, 461, 462, 463, 466, 467, 484,
22 486, 490, 491, or part I, part III, part X, part XIII, or part
23 XIV of chapter 468, or s. 464.012, which are wholly owned by
24 licensed health care practitioners or the licensed health care
25 practitioner and the spouse, parent, or child of a licensed
26 health care practitioner, so long as one of the owners who is
27 a licensed health care practitioner is supervising the
28 services performed therein and is legally responsible for the
29 entity's compliance with all federal and state laws. However,
30 no health care practitioner may supervise services beyond the
31 scope of the practitioner's license.

1 Section 3. Paragraphs (aa) and (bb) of subsection (1)
2 of section 456.072, Florida Statutes, are amended to read:

3 456.072 Grounds for discipline; penalties;
4 enforcement.--

5 (1) The following acts shall constitute grounds for
6 which the disciplinary actions specified in subsection (2) may
7 be taken:

8 (aa) Performing any of the following procedures, if
9 reportable under s. 395.0197 or s. 458.351:

- 10 1. A surgical procedure on the wrong patient;
11 2. A wrong-site surgical procedure;
12 3. A wrong surgical procedure; or
13 4. A surgical procedure that is medically unnecessary,
14 or otherwise unrelated to the patient's diagnosis or medical
15 condition.~~or attempting to perform health care services on~~
16 ~~the wrong patient, a wrong-site procedure, a wrong procedure,~~
17 ~~or an unauthorized procedure or a procedure that is medically~~
18 ~~unnecessary or otherwise unrelated to the patient's diagnosis~~
19 ~~or medical condition. For the purposes of this paragraph,~~
20 ~~performing or attempting to perform health care services~~
21 ~~includes the preparation of the patient.~~

22 (bb) Leaving a foreign body in a patient during a
23 surgical procedure when leaving the foreign body is not
24 medically indicated, ~~such as a sponge, clamp, forceps,~~
25 ~~surgical needle, or other paraphernalia commonly used in~~
26 ~~surgical, examination, or other diagnostic procedures. For the~~
27 ~~purposes of this paragraph, it shall be legally presumed that~~
28 ~~retention of a foreign body is not in the best interest of the~~
29 ~~patient and is not within the standard of care of the~~
30 ~~profession, regardless of the intent of the professional.~~

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1 Section 4. Paragraph (a) of subsection (1) of section
2 766.101, Florida Statutes, is amended to read:

3 766.101 Medical review committee, immunity from
4 liability.--

5 (1) As used in this section:

6 (a) The term "medical review committee" or "committee"
7 means:

8 1.a. A committee of a hospital or ambulatory surgical
9 center licensed under chapter 395 or a health maintenance
10 organization certificated under part I of chapter 641,

11 b. A committee of a physician-hospital organization, a
12 provider-sponsored organization, or an integrated delivery
13 system,

14 c. A committee of a state or local professional
15 society of health care providers,

16 d. A committee of a medical staff of a licensed
17 hospital or nursing home, provided the medical staff operates
18 pursuant to written bylaws that have been approved by the
19 governing board of the hospital or nursing home,

20 e. A committee of the Department of Corrections or the
21 Correctional Medical Authority as created under s. 945.602, or
22 employees, agents, or consultants of either the department or
23 the authority or both,

24 f. A committee of a professional service corporation
25 formed under chapter 621 or a corporation organized under
26 chapter 607 or chapter 617, which is formed and operated for
27 the practice of medicine as defined in s. 458.305(3), and
28 which has at least 25 health care providers who routinely
29 provide health care services directly to patients,

30 g. A committee of a mental health treatment facility
31 licensed under chapter 394 or a community mental health center

1 as defined in s. 394.907, provided the quality assurance
2 program operates pursuant to the guidelines which have been
3 approved by the governing board of the agency,

4 h. A committee of a substance abuse treatment and
5 education prevention program licensed under chapter 397
6 provided the quality assurance program operates pursuant to
7 the guidelines which have been approved by the governing board
8 of the agency,

9 i. A peer review or utilization review committee
10 organized under chapter 440,

11 j. A committee of the Department of Health, a county
12 health department, healthy start coalition, or certified rural
13 health network, when reviewing quality of care, or employees
14 of these entities when reviewing mortality records, ~~or~~

15 k. A continuous quality improvement committee of a
16 pharmacy licensed pursuant to chapter 465,

17 l. A committee established by a university board of
18 trustees, or

19 m. A committee composed of faculty, residents,
20 students, or administrators of an accredited college of
21 medicine, nursing, or other health care discipline,

22
23 which committee is formed to evaluate and improve the quality
24 of health care rendered by providers of health service or to
25 determine that health services rendered were professionally
26 indicated or were performed in compliance with the applicable
27 standard of care or that the cost of health care rendered was
28 considered reasonable by the providers of professional health
29 services in the area; or

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