

By Senator Saunders

37-1060-05

1                                    A bill to be entitled

2                    An act relating to health care risk management;

3                    amending s. 395.10974, F.S.; revising the fee

4                    requirements for applicants for licensure to

5                    practice health care risk management; amending

6                    s. 395.0197, F.S.; requiring that a licensed

7                    health care facility use the services of a

8                    licensed risk manager rather than hire a

9                    licensed risk manager; providing that a risk

10                  manager may not be responsible for more than

11                  four internal risk management programs in

12                  separate hospitals, unless the hospitals are

13                  under one corporate ownership or the risk

14                  management programs are in rural hospitals;

15                  amending s. 456.072, F.S.; providing that

16                  invasive action taken in preparation of the

17                  patient constitutes grounds for which specified

18                  disciplinary actions may be taken; provides

19                  that noninvasive preparatory procedures do not

20                  constitute grounds for which specified

21                  disciplinary actions may be taken; providing an

22                  exception for disciplinary action when leaving

23                  a foreign body in a patient if leaving the

24                  foreign body is medically indicated and

25                  documented in the patient record; amending s.

26                  395.3025, F.S.; clarifying circumstances under

27                  which confidential patient records may be

28                  disclosed by health care facility personnel and

29                  other licensed health care facilities for the

30                  purpose of treating a patient; authorizing the

31                  disclosure of confidential patient records by

1 facility personnel for the purposes of  
2 treatment, payment, and its own health care  
3 operations; authorizing the disclosure of  
4 confidential patient records to health care  
5 oversight agencies and researchers of facility  
6 personnel for research purposes; defining the  
7 term "marketing" for purposes of patient  
8 treatment records that are confidential and  
9 exempt from the public-records law; providing  
10 an effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. Subsection (3) of section 395.10974,  
15 Florida Statutes, is amended to read:

16 395.10974 Health care risk managers; qualifications,  
17 licensure, fees.--

18 (3) The agency shall issue a license to practice  
19 health care risk management to any applicant who qualifies  
20 under this section. The amount of the fees shall be  
21 established by rule, as follows: and submits an application  
22 fee of not more than \$75, ~~a fingerprinting fee of not more~~  
23 ~~than \$75,~~ and a license fee of not more than \$100. ~~The agency~~  
24 ~~shall by rule establish fees and procedures for the issuance~~  
25 ~~and cancellation of licenses.~~

26 Section 2. Subsection (2) of section 395.0197, Florida  
27 Statutes, is amended to read:

28 395.0197 Internal risk management program.--

29 (2) The internal risk management program is the  
30 responsibility of the governing board of the health care  
31 facility. Each licensed facility shall use the services of

1 ~~hire~~ a risk manager, licensed under s. 395.10974, who is  
2 responsible for implementation and oversight of such  
3 facility's internal risk management program as required by  
4 this section. A risk manager must not be made responsible for  
5 more than four internal risk management programs in separate  
6 ~~hospitals licensed facilities~~, unless the ~~hospitals facilities~~  
7 are under one corporate ownership or the risk management  
8 programs are in rural hospitals.

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

11 456.072 Grounds for discipline; penalties;  
12 enforcement.--

13 (1) The following acts shall constitute grounds for  
14 which the disciplinary actions specified in subsection (2) may  
15 be taken:

16 (aa) Performing or attempting to perform health care  
17 services on the wrong patient, a wrong-site procedure, a wrong  
18 procedure, or an unauthorized procedure or a procedure that is  
19 medically unnecessary or otherwise unrelated to the patient's  
20 diagnosis or medical condition. For the purposes of this  
21 paragraph, performing or attempting to perform health care  
22 services includes invasive action taken in furtherance of the  
23 preparation of the patient, but does not include those  
24 preparations that are noninvasive.

25 (bb) Leaving a foreign body in a patient, such as a  
26 sponge, clamp, forceps, surgical needle, or other  
27 paraphernalia commonly used in surgical, examination, or other  
28 diagnostic procedures, unless leaving the foreign body is  
29 medically indicated and documented in the patient record. For  
30 the purposes of this paragraph, it shall be legally presumed  
31 that retention of a foreign body is not in the best interest

1 of the patient and is not within the standard of care of the  
2 profession, unless medically indicated and documented in the  
3 patient record ~~regardless of the intent of the professional.~~

4 Section 4. Subsections (4) and (7) of section  
5 395.3025, Florida Statutes, are amended to read:

6 395.3025 Patient and personnel records; copies;  
7 examination.--

8 (4) Patient records are confidential and must not be  
9 disclosed without the consent of the person to whom they  
10 pertain, but appropriate disclosure may be made without such  
11 consent to:

12 (a) ~~Licensed~~ Facility personnel and all other licensed  
13 health care facilities and practitioners if such disclosure  
14 pertains to the facility's treatment of the patient or the  
15 treatment by another health care provider of the patient  
16 ~~attending physicians for use in connection with the treatment~~  
17 ~~of the patient.~~

18 (b) ~~Licensed~~ Facility personnel may disclose protected  
19 health information for treatment and payment and for purposes  
20 of the facility's health care operations as defined by 45  
21 C.F.R. 160 and 164 only for administrative purposes or risk  
22 ~~management and quality assurance functions.~~

23 (c) Health care oversight agencies ~~The agency, for~~  
24 ~~purposes of health care cost containment.~~

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

30 (e) The agency upon subpoena issued pursuant to s.  
31 456.071, but the records obtained thereby must be used solely

1 | for the purpose of the agency and the appropriate professional  
2 | board in its investigation, prosecution, and appeal of  
3 | disciplinary proceedings. If the agency requests copies of the  
4 | records, the facility shall charge no more than its actual  
5 | copying costs, including reasonable staff time. The records  
6 | must be sealed and must not be available to the public  
7 | pursuant to s. 119.07(1) or any other statute providing access  
8 | to records, nor may they be available to the public as part of  
9 | the record of investigation for and prosecution in  
10 | disciplinary proceedings made available to the public by the  
11 | agency or the appropriate regulatory board. However, the  
12 | agency must make available, upon written request by a  
13 | practitioner against whom probable cause has been found, any  
14 | such records that form the basis of the determination of  
15 | probable cause.

16 |         (f) The Department of Health or its agent, for the  
17 | purpose of establishing and maintaining a trauma registry and  
18 | for the purpose of ensuring that hospitals and trauma centers  
19 | are in compliance with the standards and rules established  
20 | under ss. 395.401, 395.4015, 395.4025, 395.404, 395.4045, and  
21 | 395.405, and for the purpose of monitoring patient outcome at  
22 | hospitals and trauma centers that provide trauma care  
23 | services.

24 |         (g) The Department of Children and Family Services or  
25 | its agent, for the purpose of investigations of cases of  
26 | abuse, neglect, or exploitation of children or vulnerable  
27 | adults.

28 |         (h) The State Long-Term Care Ombudsman Council and the  
29 | local long-term care ombudsman councils, with respect to the  
30 | records of a patient who has been admitted from a nursing home  
31 | or long-term care facility, when the councils are conducting

1 an investigation involving the patient as authorized under  
2 part II of chapter 400, upon presentation of identification as  
3 a council member by the person making the request. Disclosure  
4 under this paragraph shall only be made after a competent  
5 patient or the patient's representative has been advised that  
6 disclosure may be made and the patient has not objected.

7 (i) A local trauma agency or a regional trauma agency  
8 that performs quality assurance activities, or a panel or  
9 committee assembled to assist a local trauma agency or a  
10 regional trauma agency in performing quality assurance  
11 activities. Patient records obtained under this paragraph are  
12 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
13 of the State Constitution.

14 (j) Organ procurement organizations, tissue banks, and  
15 eye banks required to conduct death records reviews pursuant  
16 to s. 395.2050.

17 (k) The Medicaid Fraud Control Unit in the Department  
18 of Legal Affairs pursuant to s. 409.920.

19 (l) The Department of Financial Services, or an agent,  
20 employee, or independent contractor of the department who is  
21 auditing for unclaimed property pursuant to chapter 717.

22 (m) Researchers or facility personnel for research  
23 purposes if the facility or researchers demonstrate compliance  
24 with the requirements of 45 C.F.R. s. 164.512(12)(i).

25 (7)(a) If the content of any record of patient  
26 treatment is provided under this section, the recipient, if  
27 other than the patient or the patient's representative, may  
28 use such information only for the purpose provided and may not  
29 further disclose any information to any other person or  
30 entity, unless expressly permitted by the written consent of  
31 the patient. A general authorization for the release of

1 | medical information is not sufficient for this purpose. The  
2 | content of such patient treatment record is confidential and  
3 | exempt from the provisions of s. 119.07(1) and s. 24(a), Art.  
4 | I of the State Constitution.

5 |         (b) Absent a specific written release or authorization  
6 | permitting utilization of patient information for ~~solicitation~~  
7 | or marketing the sale of goods or services, any use of such  
8 | ~~that~~ information for that purpose ~~those purposes~~ is  
9 | prohibited. As used in this paragraph, the term "marketing"  
10 | has the same meaning as set forth in 45 C.F.R. s. 164.501

11 |             Section 5. This act shall take effect July 1, 2005.

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14 |                             SENATE SUMMARY

15 |     Establisher fees for health care risk management  
16 |     licenses. Provides that a health care facility only need  
17 |     use the services of, instead of hire, a licensed risk  
18 |     manager. Requires that the licensed risk manager must not  
19 |     be responsible for more than four risk management  
20 |     programs in separate hospitals, but provides exceptions  
21 |     to the requirement. Provides that invasive preparatory  
22 |     procedures constitute grounds for specific disciplinary  
23 |     actions while noninvasive preparatory procedures do not.  
24 |     Provides that leaving a foreign body in a patient does  
25 |     not constitute grounds for discipline if doing so is  
26 |     medically indicated and documented in the patient record.  
27 |     Provides additional situations in which confidential  
28 |     patient records may be disclosed. Defines the term  
29 |     "marketing" for purposes of a public-records exemption.  
30 |  
31 |