

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1609

Patient Records

**SPONSOR(S):** Bucher

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	10 Y, 0 N	Hamrick	Mitchell
2) Health & Families Council	10 Y, 0 N	Hamrick	Moore
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Outsourcing of medical records across borders raises critical privacy issues. As confidential information is routed offshore legal protections and recourse do not follow.

The bill provides that a licensed facility must disclose to patients and receive written consent before any individually identifiable patient record can be transmitted to a site outside of the United States.

The bill also provides that any entity which contracts or subcontracts with a licensed facility must disclose whether any individually identifiable information will be transmitted outside of the United States.

The bill provides that a patient may revoke their consent in writing at any time. A licensed facility may not discriminate against an individual who may deny consent by refusing to provide health care services.

The bill takes effect on July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard individual liberty** -The bill requires licensed facilities, which transmit records outside of the United States, to receive written consent from their patients.

#### B. EFFECT OF PROPOSED CHANGES:

The bill provides that if any record of patient treatment is transmitted to a site outside of the United States the licensed facility<sup>1</sup> must disclose this fact to their patients and receive written consent on an annual basis. The bill also provides that if a licensed facility contracts or subcontracts with another entity that receives individually identifiable health information, the entity must disclose to the licensed facility whether any of their information will be transmitted outside of the United States.

The bill provides that a patient may revoke their consent in writing at any time. An exception to this requirement may occur when a patient is seeking health care services, such as diagnosis or treatment, outside of the United States. In this instance, the licensed facility must use a form to obtain consent to transmit the patients individually identifiable health information outside of the United States.

The consent form must be a separate document, not attached to any other document, that is dated and signed by the patient, and clearly discloses to the patient that “by signing, the patient is consenting to the transmission of his or her individually identifiable health information to a site outside of the United States where the information is not protected by United States confidentiality laws.” The consent form must also disclose that the patient must renew their consent on an annual basis and may revoke consent at any time, along with the procedures by which consent may be revoked.

The bill states that a licensed facility may not discriminate against an individual who may deny consent by refusing to provide health care services.

### BACKGROUND

Currently, Florida Statutes do not address nor prohibit the outsourcing of any health care service to include transcription to sites outside of the United States.

#### Outsourcing

Outsourcing raises critical privacy issues as financial, credit, personal identification, and medical records are sent across borders. As confidential information is routed offshore, legal protections and recourse do not follow.<sup>2</sup>

In 2003, a medical transcriber in Pakistan threatened to post a patient’s records on-line unless the University of California San Francisco (UCSF) Medical Center paid the wages owed to her by the U.S. subcontractor that had sent the work to her. The hospital’s transcription work had already been subcontracted from a Sausalito-based transcription firm to two U.S. sources before being subcontracted a third time to the transcriber in Pakistan. Heartland Information Services, an Ohio-

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<sup>1</sup> A “licensed facility” is a hospital, ambulatory surgical center, or mobile surgical facility licensed in accordance to Florida Statute. See s. 395.002(17), F.S.

<sup>2</sup> From an article published by the National Labor Caucus of State Legislators titled “Model Health Care Consumer Protection Act.”

based company that offshores medical records work to India, received a similar threat from a group of disgruntled employees in Bangalore, India.<sup>3</sup>

### **The Health Insurance Portability and Accountability Act and the Privacy Rule**

The Health Insurance Portability and Accountability Act of 1996 (HIPPA), required the Secretary of the Department of Health and Human Services to publicize standards for the electronic exchange, privacy, and security of health information. HIPPA did not enact privacy legislation, so the Department of Health and Human Services developed a proposed rule, called the "Privacy Rule."

Released in December 2002, the Privacy Rules address individually identifiable health information, which apply to health plans, health care clearinghouses, and any health care provider who transmits health information in an electronic format inside the United States. The Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity of its business associate, in any form or media, whether electronic, paper, or oral.

An entity that is covered by the Privacy Rule may not use or disclose protected health information except: (1) as the Privacy Rule permits and (2) if the individual who is the subject of the information authorizes in writing. A covered entity must obtain the individual's written authorization for any use or disclosure of protected health information that is not for treatment, payment, or health care operations or otherwise permitted or required by law.

Once individually identifiable information leaves the United States the protections granted by HIPPA and the Privacy Rule are difficult to enforce.

#### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 395.3025, F.S., requires a licensed facility to disclose and receive consent from patients to send identifiable patient information outside the United States.

**Section 2.** Provides an effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>3</sup> From an article published on [www.CommonDreams.org](http://www.CommonDreams.org) titled "Gap in Basic Consumer Safeguards Encouraging Offshoring," by Lori Wallach (April 21, 2004).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. See "D. Fiscal Comments."

D. FISCAL COMMENTS:

All licensed facilities that transmit individual identifiable information outside of the United States will be required to gain consent and produce consent forms for their patients. If patients refuse to provide consent, the licensed facility will have to seek similar health care services inside the United States.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Agency for Health Care Administration has recommended a technical amendment to add the word "disclosure" into the title section of s. 395.3025, F.S.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES