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A bill to be entitled
 An act relating to access to adverse medical incident records; creating s. 381.028, F.S.; providing a popular name; providing a purpose; providing legislative findings; providing definitions; specifying a patient's right of access to records relating to adverse medical incidents; prohibiting disclosure of a patient's identity and requiring the maintenance of federal privacy restrictions; providing application; providing construction; limiting the discoverability or admissibility into evidence of certain records; providing requirements and limitations for health care facilities and health care providers in the production of records, including copy fees; providing an effective date.

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

Section 1. Section 381.028, Florida Statutes, is created to read:

381.028 Adverse medical incidents.--

(1) POPULAR NAME.--This section may be cited as the "Patients' Right to Know about Adverse Medical Incidents Act."

(2) PURPOSE; LEGISLATIVE FINDINGS.--It is the purpose of this section to implement s. 25, Art. X of the State Constitution. The Legislature finds that s. 25, Art. X of the State Constitution is intended to grant patient access to records of adverse medical incidents made or received in the course of business by a health care facility or provider and not

29 to repeal or otherwise modify existing laws regulating the use
 30 of these records and the information contained therein. The
 31 Legislature further finds that all existing laws extending
 32 criminal and civil immunity to persons providing information to
 33 quality-of-care committees or organizations and all existing
 34 laws concerning the discoverability or admissibility into
 35 evidence of records of an adverse medical incident in any
 36 judicial or administrative proceeding should remain in full
 37 force and effect.

38 (3) DEFINITIONS.--As used in s. 25, Art. X of the State
 39 Constitution and for purposes of this section:

40 (a) "Agency" means the Agency for Health Care
 41 Administration.

42 (b) "Adverse medical incident" means medical negligence,
 43 intentional misconduct, or any other act, neglect, or default of
 44 a health care facility or health care provider that caused or
 45 could have caused injury to or death of a patient, including,
 46 but not limited to, those incidents that are required by state
 47 or federal law to be reported to any governmental agency or body
 48 and incidents that are reported to or reviewed by any health
 49 care facility peer review, risk management, quality assurance,
 50 credentials, or similar committee or any representative of any
 51 such committee.

52 (c) "Department" means the Department of Health.

53 (d) "Access" means, in addition to any other procedure for
 54 producing records provided by general law, making records
 55 available for inspection and copying upon formal or informal
 56 request by the patient or representative of the patient,

57 provided current records that have been made publicly available
58 by publication or on the Internet may be provided by reference
59 to the location at which the records are publicly available.

60 (e) "Health care provider" means a physician licensed
61 under chapter 458 or chapter 459.

62 (f) "Health care facility" means a facility licensed under
63 chapter 395.

64 (g) "Identity" means any individually identifiable health
65 information as defined by the Health Insurance Portability and
66 Accountability Act of 1996 or its implementing regulations.

67 (h) "Patient" means an individual who has sought, is
68 seeking, is undergoing, or has undergone care or treatment in a
69 health care facility or by a health care provider.

70 (i) "Privacy restrictions imposed by federal law" means
71 the provisions relating to the disclosure of patient privacy
72 information under federal law, including, but not limited to,
73 the Health Insurance Portability and Accountability Act of 1996
74 (HIPAA), Public Law 104-91, and its implementing regulations,
75 the Federal Privacy Act, 5 U.S.C. s. 552(a), and its
76 implementing regulations, and any other federal law, including,
77 but not limited to, federal common law and decisional law, that
78 would prohibit the disclosure of patient privacy information.

79 (j) "Records" means the final report of any adverse
80 medical incident. Medical records that are not the final report
81 of any adverse medical incident, including drafts or other
82 nonfinal versions or notes, and any documents or portions
83 thereof that constitute, contain, or reflect any attorney-client
84 communications or any attorney-client work product, shall not be

85 considered records for purposes of s. 25, Art. X of the State
 86 Constitution and this section.

87 (k) "Representative of the patient" means a parent of a
 88 minor patient, a court-appointed guardian for the patient, a
 89 health care surrogate, or a person holding a power of attorney
 90 or notarized consent appropriately executed by the patient
 91 granting permission to a health care facility or health care
 92 provider to disclose the patient's health care information to
 93 that person. The term "representative of the patient" in the
 94 case of a deceased patient also means the personal
 95 representative of the estate of the deceased patient; the
 96 deceased patient's surviving spouse, surviving parent, or
 97 surviving adult child; the parent or guardian of a surviving
 98 minor child of the deceased patient; or the attorney for any of
 99 such persons.

100 (4) PATIENT RIGHT OF ACCESS.--Patients have a right of
 101 access to any records made or received in the course of business
 102 by a health care facility or health care provider relating to
 103 any adverse medical incident. In providing access to these
 104 records, the health care facility or health care provider shall
 105 not disclose the identity of patients involved in the incidents
 106 and shall maintain any privacy restrictions imposed by federal
 107 law.

108 (5) APPLICABILITY.--Section 25, Art. X of the State
 109 Constitution shall apply to records created, incidents
 110 occurring, and actions pending on or after November 3, 2004.
 111 Section 25, Art. X of the State Constitution shall not apply to
 112 records created, incidents occurring, or actions pending prior

113 to November 3, 2004. A patient requesting records on or after
 114 November 3, 2008, shall be eligible to receive records created
 115 within 4 years prior to the date of the request.

116 (6) USES OF RECORDS.--

117 (a) Nothing in this section shall be construed to repeal
 118 or otherwise alter any existing restrictions on the
 119 discoverability or admissibility of records relating to adverse
 120 medical incidents otherwise provided by law, including, but not
 121 limited to, restrictions contained in ss. 395.0191, 395.0193,
 122 395.0197, 766.101, and 766.1016, or to repeal or otherwise alter
 123 any immunity provided to, or prohibition against compelling
 124 testimony by, persons providing information or participating in
 125 any peer review panel, medical review committee, hospital
 126 committee, or other hospital board otherwise provided by law,
 127 including, but not limited to, ss. 395.0191, 395.0193, 766.101,
 128 and 766.1016.

129 (b) Except as otherwise provided by act of the
 130 Legislature, records of adverse medical incidents, including any
 131 information contained in such records, obtained pursuant to s.
 132 25, Art. X of the State Constitution shall not be discoverable
 133 or admissible into evidence for any purpose, including
 134 impeachment in any civil or administrative action against a
 135 health care facility or health care provider. This prohibition
 136 includes information relating to performance or quality
 137 improvement initiatives and information relating to the identity
 138 of reviewers, complainants, or any person providing information
 139 contained in or used in or person participating in the creation
 140 of the records of adverse medical incidents.

141 (7) PRODUCTION OF RECORDS.--

142 (a) Pursuant to s. 25, Art. X of the State Constitution,
 143 adverse medical incident records to which a patient is granted
 144 access are those of the facility or provider of which he or she
 145 is a patient and that pertain to any adverse medical incident
 146 affecting the patient or affecting any other patient whose
 147 condition, treatment, or diagnosis is the same as or
 148 substantially similar to that of the patient requesting access.

149 (b)1. Using the process provided in s. 395.0197, a health
 150 care facility is responsible for identifying records as records
 151 of an adverse medical incident, as defined in s. 25, Art. X of
 152 the State Constitution.

153 2. Using the process provided in s. 458.351, a health care
 154 provider is responsible for identifying records as records of an
 155 adverse medical incident, as defined in s. 25, Art. X of the
 156 State Constitution, occurring in an office setting.

157 (c)1. Fees charged by a health care facility for copies of
 158 records requested by a patient pursuant to s. 25, Art. X of the
 159 State Constitution shall not exceed the reasonable and actual
 160 cost to comply with the request, including a reasonable charge
 161 for the staff time necessary to prevent the disclosure of the
 162 identity of any patient involved in the adverse medical incident
 163 through redaction or other means as required by the Health
 164 Insurance Portability and Accountability Act of 1996 or its
 165 implementing regulations. The health care facility may require
 166 payment, in full or in part, prior to acting on the records
 167 request.

168 2. Fees charged by a health care provider for copies of
 169 records requested by a patient pursuant to s. 25, Art. X of the
 170 State Constitution shall not exceed the amount established
 171 pursuant to s. 456.057(16), which may include a reasonable
 172 charge for the staff time necessary to prevent the disclosure of
 173 the identity of any patient involved in the adverse medical
 174 incident through redaction or other means as required by the
 175 Health Insurance Portability and Accountability Act of 1996 or
 176 its implementing regulations. The health care provider may
 177 require payment, in full or in part, prior to acting on the
 178 records request.

179 (d)1. Requests for production of adverse medical incident
 180 records shall be processed by a health care facility or health
 181 care provider in a timely manner after having a reasonable
 182 opportunity to determine whether the requested record is a
 183 record subject to disclosure and to prevent the disclosure of
 184 the identity of any patient involved in the adverse medical
 185 incident through redaction or other means.

186 2. A request for production of records must be submitted
 187 in writing and identify the patient requesting access to the
 188 records by name, address, and the last four digits of the
 189 patient's social security number, describe the patient's
 190 condition, treatment, or diagnosis, and provide the name of the
 191 health care providers whose records are being sought.

192 Section 2. This act shall take effect July 1, 2005.