

CHAMBER ACTION

1 The Health Care Regulation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to access to adverse medical incident
7 records; creating s. 381.028, F.S.; providing a popular
8 name; providing a purpose; providing legislative findings;
9 providing definitions; specifying a patient's right of
10 access to records relating to adverse medical incidents;
11 prohibiting disclosure of a patient's identity and
12 requiring the maintenance of federal privacy restrictions;
13 providing application; providing construction; limiting
14 the discoverability or admissibility into evidence of
15 certain records; providing requirements and limitations
16 for health care facilities and health care providers in
17 the production of records, including copy fees; providing
18 an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 381.028, Florida Statutes, is created
23 to read:

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24 | 381.028 Adverse medical incidents.--
 25 | (1) POPULAR NAME.--This section may be cited as the
 26 | "Patients' Right to Know about Adverse Medical Incidents Act."
 27 | (2) PURPOSE; LEGISLATIVE FINDINGS.--It is the purpose of
 28 | this section to implement s. 25, Art. X of the State
 29 | Constitution. The Legislature finds that s. 25, Art. X of the
 30 | State Constitution is intended to grant patient access to
 31 | records of adverse medical incidents made or received in the
 32 | course of business by a health care facility or provider and not
 33 | to repeal or otherwise modify existing laws regulating the use
 34 | of these records and the information contained therein. The
 35 | Legislature further finds that all existing laws extending
 36 | criminal and civil immunity to persons providing information to
 37 | quality-of-care committees or organizations and all existing
 38 | laws concerning the discoverability or admissibility into
 39 | evidence of records of an adverse medical incident in any
 40 | judicial or administrative proceeding should remain in full
 41 | force and effect.
 42 | (3) DEFINITIONS.--As used in s. 25, Art. X of the State
 43 | Constitution and for purposes of this section:
 44 | (a) "Adverse medical incident" means medical negligence,
 45 | intentional misconduct, or any other act, neglect, or default of
 46 | a health care facility or health care provider that caused or
 47 | could have caused injury to or death of a patient, including,
 48 | but not limited to, those incidents that are required by state
 49 | or federal law to be reported to any governmental agency or body
 50 | and incidents that are reported to or reviewed by any health
 51 | care facility peer review, risk management, quality assurance,

52 credentials, or similar committee or any representative of any
 53 such committee.

54 (b) "Access" means, in addition to any other procedure for
 55 producing records provided by general law, making records
 56 available for inspection and copying upon formal or informal
 57 request by the patient or representative of the patient,
 58 provided current records that have been made publicly available
 59 by publication or on the Internet may be provided by reference
 60 to the location at which the records are publicly available.

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

63 (d) "Health care facility" means a facility licensed under
 64 chapter 395.

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

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

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

80 (h) "Records" means the final report of any adverse
 81 medical incident. Medical records that are not the final report
 82 of any adverse medical incident, including drafts or other
 83 nonfinal versions or notes, and any documents or portions
 84 thereof that constitute, contain, or reflect any attorney-client
 85 communications or any attorney-client work product, shall not be
 86 considered records for purposes of s. 25, Art. X of the State
 87 Constitution and this section.

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

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

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107 and shall maintain any privacy restrictions imposed by federal
108 law.

109 (5) APPLICABILITY.--Section 25, Art. X of the State
110 Constitution shall apply to records created and incidents
111 occurring on or after November 3, 2004. Section 25, Art. X of
112 the State Constitution shall not apply to records created or
113 incidents occurring prior to November 3, 2004. A patient
114 requesting records on or after November 3, 2008, shall be
115 eligible to receive records created within 4 years prior to the
116 date of the request.

117 (6) USES OF RECORDS.--

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

130 (b) Except as otherwise provided by act of the
131 Legislature, records of adverse medical incidents, including any
132 information contained in such records, obtained pursuant to s.
133 25, Art. X of the State Constitution shall not be discoverable
134 or admissible into evidence for any purpose, including

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135 impeachment in any civil or administrative action against a
136 health care facility or health care provider. This prohibition
137 includes information relating to performance or quality
138 improvement initiatives and information relating to the identity
139 of reviewers, complainants, or any person providing information
140 contained in or used in or person participating in the creation
141 of the records of adverse medical incidents.

142 (7) PRODUCTION OF RECORDS.--

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

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

154 2. Using the process provided in s. 458.351 or s. 459.026,
155 a health care provider is responsible for identifying records as
156 records of an adverse medical incident, as defined in s. 25,
157 Art. X of the State Constitution, occurring in an office
158 setting.

159 (c)1. Fees charged by a health care facility for copies of
160 records requested by a patient pursuant to s. 25, Art. X of the
161 State Constitution shall not exceed the reasonable and actual
162 cost to comply with the request, including a reasonable charge

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163 for the staff time necessary to prevent the disclosure of the
 164 identity of any patient involved in the adverse medical incident
 165 through redaction or other means as required by the Health
 166 Insurance Portability and Accountability Act of 1996 or its
 167 implementing regulations. The health care facility may require
 168 payment, in full or in part, prior to acting on the records
 169 request.

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

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

188 2. A request for production of records must be submitted
 189 in writing and identify the patient requesting access to the
 190 records by name, address, and the last four digits of the

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191 | patient's social security number, describe the patient's
192 | condition, treatment, or diagnosis, and provide the name of the
193 | health care providers whose records are being sought.

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