

Bill No. SB 938

Barcode 614830

Proposed Committee Substitute by the Committee on Health Care

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

A bill to be entitled  
An act relating to patients' right to know  
about adverse medical incidents; creating s.  
395.3016, F.S.; requiring that a health care  
facility provide patients with access to  
records concerning adverse medical incidents  
occurring on or after a specified date;  
prohibiting the facility from disclosing the  
identity of patients; defining the phrase  
"adverse medical incident"; providing  
procedures for making records available to  
patients; requiring that the Agency for Health  
Care Administration impose a fine against a  
facility that fails to provide access to  
records or that discloses the identity of a  
patient; amending s. 395.0193, F.S.; providing  
that an exemption from public-records  
requirements which is provided for records  
concerning peer reviews does not apply to those  
records concerning adverse medical incidents  
which are subject to disclosure upon the  
request of a patient; amending s. 395.0197,  
F.S.; providing that an exemption from  
public-records requirements which is provided  
for records collected under an internal  
risk-management program does not apply to those  
records concerning adverse incidents which are  
subject to disclosure upon the request of a  
patient; amending s. 395.3025, F.S.;  
authorizing a patient to have access to patient  
medical records containing information

Bill No. SB 938

Barcode 614830

1 concerning adverse medical incidents; exempting  
2 such records from public-records requirements;  
3 amending s. 395.51, F.S.; providing that an  
4 exemption from public-records requirements  
5 which is provided for hospital records relating  
6 to the quality assurance activities of trauma  
7 agencies does not apply to those records  
8 concerning adverse incidents which are subject  
9 to disclosure upon the request of a patient;  
10 amending s. 456.057, F.S.; requiring that a  
11 records owner release patient records that  
12 include information concerning adverse medical  
13 incidents upon the request of a patient;  
14 creating ss. 458.352, 459.027, and 461.019,  
15 F.S.; requiring that physicians, osteopathic  
16 physicians, and podiatric physicians provide  
17 patients with access to records concerning  
18 adverse medical incidents occurring on or after  
19 a specified date; prohibiting the physician  
20 from disclosing the identity of patients;  
21 defining the phrase "adverse medical incident";  
22 providing procedures for making records  
23 available to patients; requiring that the Board  
24 of Medicine, Board of Osteopathic Medicine, or  
25 Board of Podiatric Medicine, as applicable,  
26 impose a fine against a physician who fails to  
27 provide access to records or who discloses the  
28 identity of a patient; providing an effective  
29 date.

30

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

Bill No. SB 938

Barcode 614830

1           Section 1. Section 395.3016, Florida Statutes, is  
2 created to read:

3           395.3016 Patients' right to know about adverse medical  
4 incidents.--

5           (1) For purposes of implementing s. 25, Art. X of the  
6 State Constitution, a patient who has sought, is seeking, is  
7 undergoing, or has undergone care or treatment in a health  
8 care facility licensed under this chapter has a right to have  
9 access to any records made or received in the course of  
10 business by the health care facility relating to any adverse  
11 medical incident. In providing such access, the facility may  
12 not disclose the identity of any patient involved in an  
13 incident, and the privacy restrictions imposed by federal law  
14 must be maintained. This section applies only to records of an  
15 adverse medical incident that occurs on or after November 2,  
16 2004.

17           (2) As used in this section, the phrase "adverse  
18 medical incident" means medical negligence, intentional  
19 misconduct, and any other act, neglect, or default of a health  
20 care facility or health care provider that caused or could  
21 have caused injury to or death of a patient, including, but  
22 not limited to, those incidents that are required by state or  
23 federal law to be reported to any governmental agency or body,  
24 and incidents that are reported to or reviewed by any health  
25 care facility peer review, risk management, quality assurance,  
26 credentials, or similar committee, or any representative of  
27 any such committees.

28           (3) In addition to any other procedure for producing  
29 such records provided by general law, a facility must make the  
30 records available for inspection and copying upon formal or  
31 informal request by the patient or a representative of the

Bill No. SB 938

Barcode 614830

1 patient, provided that current records which have been made  
2 publicly available by publication or on the Internet may be  
3 "provided" by reference to the location at which the records  
4 are publicly available. The records must be made available in  
5 a timely manner without delay for legal review. The records  
6 must be made available at reasonable times of day and days of  
7 the week within the facility's business hours. The exclusive  
8 charge for copies of the records may include sales tax and  
9 actual postage, and, except for nonpaper records that are  
10 subject to a charge not to exceed \$2, may not exceed \$1 per  
11 page. These charges apply to all records that are furnished,  
12 whether directly from the facility or from a copy service  
13 providing these services on behalf of the facility.

14 (4) The agency may levy a fine of up to \$500 for a  
15 nonwillful violation and up to \$1,000 for a willful violation  
16 against a facility that fails to provide access to the records  
17 or to provide copies if requested.

18 (5) The agency may levy a fine of up to \$500 for a  
19 nonwillful violation and up to \$1,000 for a willful violation  
20 against a facility that discloses the identity of a patient  
21 involved in an incident in the provision of records.

22 Section 2. Section 395.0193, Florida Statutes, is  
23 amended to read:

24 395.0193 Licensed facilities; peer review;  
25 disciplinary powers; agency or partnership with physicians.--

26 (1) It is the intent of the Legislature that good  
27 faith participants in the process of investigating and  
28 disciplining physicians pursuant to the state-mandated peer  
29 review process shall, in addition to receiving immunity from  
30 retaliatory tort suits pursuant to s. 456.073(12), be  
31 protected from federal antitrust suits filed under the Sherman

Barcode 614830

1 Anti-Trust Act, 15 U.S.C.A. ss. 1 et seq. Such intent is  
2 within the public policy of the state to secure the provision  
3 of quality medical services to the public.

4 (2) Each licensed facility, as a condition of  
5 licensure, shall provide for peer review of physicians who  
6 deliver health care services at the facility. Each licensed  
7 facility shall develop written, binding procedures by which  
8 such peer review shall be conducted. Such procedures shall  
9 include:

10 (a) Mechanism for choosing the membership of the body  
11 or bodies that conduct peer review.

12 (b) Adoption of rules of order for the peer review  
13 process.

14 (c) Fair review of the case with the physician  
15 involved.

16 (d) Mechanism to identify and avoid conflict of  
17 interest on the part of the peer review panel members.

18 (e) Recording of agendas and minutes which do not  
19 contain confidential material, for review by the Division of  
20 Health Quality Assurance of the agency.

21 (f) Review, at least annually, of the peer review  
22 procedures by the governing board of the licensed facility.

23 (g) Focus of the peer review process on review of  
24 professional practices at the facility to reduce morbidity and  
25 mortality and to improve patient care.

26 (3) If reasonable belief exists that conduct by a  
27 staff member or physician who delivers health care services at  
28 the licensed facility may constitute one or more grounds for  
29 discipline as provided in this subsection, a peer review panel  
30 shall investigate and determine whether grounds for discipline  
31 exist with respect to such staff member or physician. The

Bill No. SB 938

Barcode 614830

1 governing board of any licensed facility, after considering  
2 the recommendations of its peer review panel, shall suspend,  
3 deny, revoke, or curtail the privileges, or reprimand,  
4 counsel, or require education, of any such staff member or  
5 physician after a final determination has been made that one  
6 or more of the following grounds exist:

- 7           (a) Incompetence.
- 8           (b) Being found to be a habitual user of intoxicants  
9 or drugs to the extent that he or she is deemed dangerous to  
10 himself, herself, or others.
- 11           (c) Mental or physical impairment which may adversely  
12 affect patient care.
- 13           (d) Being found liable by a court of competent  
14 jurisdiction for medical negligence or malpractice involving  
15 negligent conduct.
- 16           (e) One or more settlements exceeding \$10,000 for  
17 medical negligence or malpractice involving negligent conduct  
18 by the staff member.
- 19           (f) Medical negligence other than as specified in  
20 paragraph (d) or paragraph (e).
- 21           (g) Failure to comply with the policies, procedures,  
22 or directives of the risk management program or any quality  
23 assurance committees of any licensed facility.

24           (4) Pursuant to ss. 458.337 and 459.016, any  
25 disciplinary actions taken under subsection (3) shall be  
26 reported in writing to the Division of Health Quality  
27 Assurance of the agency within 30 working days after its  
28 initial occurrence, regardless of the pendency of appeals to  
29 the governing board of the hospital. The notification shall  
30 identify the disciplined practitioner, the action taken, and  
31 the reason for such action. All final disciplinary actions

Bill No. SB 938

Barcode 614830

1 taken under subsection (3), if different from those which were  
2 reported to the agency within 30 days after the initial  
3 occurrence, shall be reported within 10 working days to the  
4 Division of Health Quality Assurance of the agency in writing  
5 and shall specify the disciplinary action taken and the  
6 specific grounds therefor. The division shall review each  
7 report and determine whether it potentially involved conduct  
8 by the licensee that is subject to disciplinary action, in  
9 which case s. 456.073 shall apply. Except for those records of  
10 adverse medical incidents which must be released under s. 25,  
11 Art. X of the State Constitution and s. 395.3016, the reports  
12 are not subject to inspection under s. 119.07(1) even if the  
13 division's investigation results in a finding of probable  
14 cause.

15 (5) There shall be no monetary liability on the part  
16 of, and no cause of action for damages against, any licensed  
17 facility, its governing board or governing board members, peer  
18 review panel, medical staff, or disciplinary body, or its  
19 agents, investigators, witnesses, or employees; a committee of  
20 a hospital; or any other person, for any action taken without  
21 intentional fraud in carrying out the provisions of this  
22 section.

23 (6) For a single incident or series of isolated  
24 incidents that are nonwillful violations of the reporting  
25 requirements of this section, the agency shall first seek to  
26 obtain corrective action by the facility. If correction is not  
27 demonstrated within the timeframe established by the agency or  
28 if there is a pattern of nonwillful violations of this  
29 section, the agency may impose an administrative fine, not to  
30 exceed \$5,000 for any violation of the reporting requirements  
31 of this section. The administrative fine for repeated

Bill No. SB 938

Barcode 614830

1 nonwillful violations shall not exceed \$10,000 for any  
2 violation. The administrative fine for each intentional and  
3 willful violation may not exceed \$25,000 per violation, per  
4 day. The fine for an intentional and willful violation of this  
5 section may not exceed \$250,000. In determining the amount of  
6 fine to be levied, the agency shall be guided by s.

7 395.1065(2)(b).

8 (7) Except for those records of adverse medical  
9 incidents which must be released under s. 25, Art. X of the  
10 State Constitution and s. 395.3016, the proceedings and  
11 records of peer review panels, committees, and governing  
12 boards or agent thereof which relate solely to actions taken  
13 in carrying out this section are not subject to inspection  
14 under s. 119.07(1); and meetings held pursuant to achieving  
15 the objectives of such panels, committees, and governing  
16 boards are not open to the public under the provisions of  
17 chapter 286.

18 (8) The investigations, proceedings, and records of  
19 the peer review panel, a committee of a hospital, a  
20 disciplinary board, or a governing board, or agent thereof  
21 with whom there is a specific written contract for that  
22 purpose, as described in this section shall not be subject to  
23 discovery or introduction into evidence in any civil or  
24 administrative action against a provider of professional  
25 health services arising out of the matters which are the  
26 subject of evaluation and review by such group or its agent,  
27 and a person who was in attendance at a meeting of such group  
28 or its agent may not be permitted or required to testify in  
29 any such civil or administrative action as to any evidence or  
30 other matters produced or presented during the proceedings of  
31 such group or its agent or as to any findings,



Bill No. SB 938

Barcode 614830

1 recommendations, evaluations, opinions, or other actions of  
2 such group or its agent or any members thereof. However,  
3 information, documents, or records otherwise available from  
4 original sources are not to be construed as immune from  
5 discovery or use in any such civil or administrative action  
6 merely because they were presented during proceedings of such  
7 group, and any person who testifies before such group or who  
8 is a member of such group may not be prevented from testifying  
9 as to matters within his or her knowledge, but such witness  
10 may not be asked about his or her testimony before such a  
11 group or opinions formed by him or her as a result of such  
12 group hearings.

13           (9) (a) If the defendant prevails in an action brought  
14 by a staff member or physician who delivers health care  
15 services at the licensed facility against any person or entity  
16 that initiated, participated in, was a witness in, or  
17 conducted any review as authorized by this section, the court  
18 shall award reasonable attorney's fees and costs to the  
19 defendant.

20           (b) As a condition of any staff member or physician  
21 bringing any action against any person or entity that  
22 initiated, participated in, was a witness in, or conducted any  
23 review as authorized by this section and before any responsive  
24 pleading is due, the staff member or physician shall post a  
25 bond or other security, as set by the court having  
26 jurisdiction of the action, in an amount sufficient to pay the  
27 costs and attorney's fees.

28           (10) (a) A hospital's compliance with the requirements  
29 of this chapter or s. 766.110(1) may not be the sole basis to  
30 establish an agency or partnership relationship between the  
31 hospital and physicians who provide services within the

Bill No. SB 938

Barcode 614830

1 hospital.

2 (b) A hospital may create an agency relationship with  
3 a physician by written contract signed by the hospital and:

- 4 1. The physician;  
5 2. A health care professional association; or  
6 3. A corporate medical group and its employees.

7

8 A written contract is not the exclusive means to establish an  
9 agency or partnership relationship between a hospital and any  
10 other person described in this paragraph.

11 Section 3. Section 395.0197, Florida Statutes, is  
12 amended to read:

13 395.0197 Internal risk management program.--

14 (1) Every licensed facility shall, as a part of its  
15 administrative functions, establish an internal risk  
16 management program that includes all of the following  
17 components:

18 (a) The investigation and analysis of the frequency  
19 and causes of general categories and specific types of adverse  
20 incidents to patients.

21 (b) The development of appropriate measures to  
22 minimize the risk of adverse incidents to patients, including,  
23 but not limited to:

24 1. Risk management and risk prevention education and  
25 training of all nonphysician personnel as follows:

26 a. Such education and training of all nonphysician  
27 personnel as part of their initial orientation; and

28 b. At least 1 hour of such education and training  
29 annually for all personnel of the licensed facility working in  
30 clinical areas and providing patient care, except those  
31 persons licensed as health care practitioners who are required

Barcode 614830

1 to complete continuing education coursework pursuant to  
2 chapter 456 or the respective practice act.

3           2. A prohibition, except when emergency circumstances  
4 require otherwise, against a staff member of the licensed  
5 facility attending a patient in the recovery room, unless the  
6 staff member is authorized to attend the patient in the  
7 recovery room and is in the company of at least one other  
8 person. However, a licensed facility is exempt from the  
9 two-person requirement if it has:

- 10           a. Live visual observation;  
11           b. Electronic observation; or  
12           c. Any other reasonable measure taken to ensure  
13 patient protection and privacy.

14           3. A prohibition against an unlicensed person from  
15 assisting or participating in any surgical procedure unless  
16 the facility has authorized the person to do so following a  
17 competency assessment, and such assistance or participation is  
18 done under the direct and immediate supervision of a licensed  
19 physician and is not otherwise an activity that may only be  
20 performed by a licensed health care practitioner.

21           4. Development, implementation, and ongoing evaluation  
22 of procedures, protocols, and systems to accurately identify  
23 patients, planned procedures, and the correct site of the  
24 planned procedure so as to minimize the performance of a  
25 surgical procedure on the wrong patient, a wrong surgical  
26 procedure, a wrong-site surgical procedure, or a surgical  
27 procedure otherwise unrelated to the patient's diagnosis or  
28 medical condition.

29           (c) The analysis of patient grievances that relate to  
30 patient care and the quality of medical services.

31           (d) A system for informing a patient or an individual

Bill No. SB 938

Barcode 614830

1 identified pursuant to s. 765.401(1) that the patient was the  
2 subject of an adverse incident, as defined in subsection (5).  
3 Such notice shall be given by an appropriately trained person  
4 designated by the licensed facility as soon as practicable to  
5 allow the patient an opportunity to minimize damage or injury.

6 (e) The development and implementation of an incident  
7 reporting system based upon the affirmative duty of all health  
8 care providers and all agents and employees of the licensed  
9 health care facility to report adverse incidents to the risk  
10 manager, or to his or her designee, within 3 business days  
11 after their occurrence.

12 (2) The internal risk management program is the  
13 responsibility of the governing board of the health care  
14 facility. Each licensed facility shall hire a risk manager,  
15 licensed under s. 395.10974, who is responsible for  
16 implementation and oversight of such facility's internal risk  
17 management program as required by this section. A risk  
18 manager must not be made responsible for more than four  
19 internal risk management programs in separate licensed  
20 facilities, unless the facilities are under one corporate  
21 ownership or the risk management programs are in rural  
22 hospitals.

23 (3) In addition to the programs mandated by this  
24 section, other innovative approaches intended to reduce the  
25 frequency and severity of medical malpractice and patient  
26 injury claims shall be encouraged and their implementation and  
27 operation facilitated. Such additional approaches may include  
28 extending internal risk management programs to health care  
29 providers' offices and the assuming of provider liability by a  
30 licensed health care facility for acts or omissions occurring  
31 within the licensed facility. Each licensed facility shall

Bill No. SB 938

Barcode 614830

1 annually report to the agency and the Department of Health the  
2 name and judgments entered against each health care  
3 practitioner for which it assumes liability. The agency and  
4 Department of Health, in their respective annual reports,  
5 shall include statistics that report the number of licensed  
6 facilities that assume such liability and the number of health  
7 care practitioners, by profession, for whom they assume  
8 liability.

9           (4) The agency shall adopt rules governing the  
10 establishment of internal risk management programs to meet the  
11 needs of individual licensed facilities. Each internal risk  
12 management program shall include the use of incident reports  
13 to be filed with an individual of responsibility who is  
14 competent in risk management techniques in the employ of each  
15 licensed facility, such as an insurance coordinator, or who is  
16 retained by the licensed facility as a consultant. The  
17 individual responsible for the risk management program shall  
18 have free access to all medical records of the licensed  
19 facility. The incident reports are part of the workpapers of  
20 the attorney defending the licensed facility in litigation  
21 relating to the licensed facility and are subject to  
22 discovery, but are not admissible as evidence in court. A  
23 person filing an incident report is not subject to civil suit  
24 by virtue of such incident report. As a part of each internal  
25 risk management program, the incident reports shall be used to  
26 develop categories of incidents which identify problem areas.  
27 Once identified, procedures shall be adjusted to correct the  
28 problem areas.

29           (5) For purposes of reporting to the agency pursuant  
30 to this section, the term "adverse incident" means an event  
31 over which health care personnel could exercise control and

Bill No. SB 938

Barcode 614830

1 which is associated in whole or in part with medical  
2 intervention, rather than the condition for which such  
3 intervention occurred, and which:

4 (a) Results in one of the following injuries:

5 1. Death;

6 2. Brain or spinal damage;

7 3. Permanent disfigurement;

8 4. Fracture or dislocation of bones or joints;

9 5. A resulting limitation of neurological, physical,  
10 or sensory function which continues after discharge from the  
11 facility;

12 6. Any condition that required specialized medical  
13 attention or surgical intervention resulting from nonemergency  
14 medical intervention, other than an emergency medical  
15 condition, to which the patient has not given his or her  
16 informed consent; or

17 7. Any condition that required the transfer of the  
18 patient, within or outside the facility, to a unit providing a  
19 more acute level of care due to the adverse incident, rather  
20 than the patient's condition prior to the adverse incident;

21 (b) Was the performance of a surgical procedure on the  
22 wrong patient, a wrong surgical procedure, a wrong-site  
23 surgical procedure, or a surgical procedure otherwise  
24 unrelated to the patient's diagnosis or medical condition;

25 (c) Required the surgical repair of damage resulting  
26 to a patient from a planned surgical procedure, where the  
27 damage was not a recognized specific risk, as disclosed to the  
28 patient and documented through the informed-consent process;  
29 or

30 (d) Was a procedure to remove unplanned foreign  
31 objects remaining from a surgical procedure.

Bill No. SB 938

Barcode 614830

1           (6) (a) Each licensed facility subject to this section  
2 shall submit an annual report to the agency summarizing the  
3 incident reports that have been filed in the facility for that  
4 year. The report shall include:

5           1. The total number of adverse incidents.

6           2. A listing, by category, of the types of operations,  
7 diagnostic or treatment procedures, or other actions causing  
8 the injuries, and the number of incidents occurring within  
9 each category.

10          3. A listing, by category, of the types of injuries  
11 caused and the number of incidents occurring within each  
12 category.

13          4. A code number using the health care professional's  
14 licensure number and a separate code number identifying all  
15 other individuals directly involved in adverse incidents to  
16 patients, the relationship of the individual to the licensed  
17 facility, and the number of incidents in which each individual  
18 has been directly involved. Each licensed facility shall  
19 maintain names of the health care professionals and  
20 individuals identified by code numbers for purposes of this  
21 section.

22          5. A description of all malpractice claims filed  
23 against the licensed facility, including the total number of  
24 pending and closed claims and the nature of the incident which  
25 led to, the persons involved in, and the status and  
26 disposition of each claim. Each report shall update status and  
27 disposition for all prior reports.

28          (b) The information reported to the agency pursuant to  
29 paragraph (a) which relates to persons licensed under chapter  
30 458, chapter 459, chapter 461, or chapter 466 shall be  
31 reviewed by the agency. The agency shall determine whether

Bill No. SB 938

Barcode 614830

1 any of the incidents potentially involved conduct by a health  
2 care professional who is subject to disciplinary action, in  
3 which case the provisions of s. 456.073 shall apply.

4 (c) The report submitted to the agency shall also  
5 contain the name and license number of the risk manager of the  
6 licensed facility, a copy of its policy and procedures which  
7 govern the measures taken by the facility and its risk manager  
8 to reduce the risk of injuries and adverse incidents, and the  
9 results of such measures. Except for those records of adverse  
10 medical incidents which must be released under s. 25, Art. X  
11 of the State Constitution and s. 395.3016, the annual report  
12 is confidential and is not available to the public pursuant to  
13 s. 119.07(1) or any other law providing access to public  
14 records. The annual report is not discoverable or admissible  
15 in any civil or administrative action, except in disciplinary  
16 proceedings by the agency or the appropriate regulatory board.  
17 The annual report is not available to the public as part of  
18 the record of investigation for and prosecution in  
19 disciplinary proceedings made available to the public by the  
20 agency or the appropriate regulatory board. However, the  
21 agency or the appropriate regulatory board shall make  
22 available, upon written request by a health care professional  
23 against whom probable cause has been found, any such records  
24 which form the basis of the determination of probable cause.

25 (7) Any of the following adverse incidents, whether  
26 occurring in the licensed facility or arising from health care  
27 prior to admission in the licensed facility, shall be reported  
28 by the facility to the agency within 15 calendar days after  
29 its occurrence:

30 (a) The death of a patient;

31 (b) Brain or spinal damage to a patient;



Bill No. SB 938

Barcode 614830

1 (c) The performance of a surgical procedure on the  
2 wrong patient;

3 (d) The performance of a wrong-site surgical  
4 procedure;

5 (e) The performance of a wrong surgical procedure;

6 (f) The performance of a surgical procedure that is  
7 medically unnecessary or otherwise unrelated to the patient's  
8 diagnosis or medical condition;

9 (g) The surgical repair of damage resulting to a  
10 patient from a planned surgical procedure, where the damage is  
11 not a recognized specific risk, as disclosed to the patient  
12 and documented through the informed-consent process; or

13 (h) The performance of procedures to remove unplanned  
14 foreign objects remaining from a surgical procedure.

15

16 The agency may grant extensions to this reporting requirement  
17 for more than 15 days upon justification submitted in writing  
18 by the facility administrator to the agency. The agency may  
19 require an additional, final report. Except for those records  
20 of adverse medical incidents which must be released under s.  
21 25, Art. X of the State Constitution and s. 395.3016, these  
22 reports shall not be available to the public pursuant to s.  
23 119.07(1) or any other law providing access to public records.  
24 The records are not, nor be discoverable or admissible in any  
25 civil or administrative action, except in disciplinary  
26 proceedings by the agency or the appropriate regulatory board,  
27 nor shall they be available to the public as part of the  
28 record of investigation for and prosecution in disciplinary  
29 proceedings made available to the public by the agency or the  
30 appropriate regulatory board. However, the agency or the  
31 appropriate regulatory board shall make available, upon

Barcode 614830

1 written request by a health care professional against whom  
2 probable cause has been found, any such records which form the  
3 basis of the determination of probable cause. The agency may  
4 investigate, as it deems appropriate, any such incident and  
5 prescribe measures that must or may be taken in response to  
6 the incident. The agency shall review each incident and  
7 determine whether it potentially involved conduct by the  
8 health care professional who is subject to disciplinary  
9 action, in which case the provisions of s. 456.073 shall  
10 apply.

11           (8) The agency shall publish on the agency's website,  
12 no less than quarterly, a summary and trend analysis of  
13 adverse incident reports received pursuant to this section,  
14 which shall not include information that would identify the  
15 patient, the reporting facility, or the health care  
16 practitioners involved. The agency shall publish on the  
17 agency's website an annual summary and trend analysis of all  
18 adverse incident reports and malpractice claims information  
19 provided by facilities in their annual reports, which shall  
20 not include information that would identify the patient, the  
21 reporting facility, or the practitioners involved. The purpose  
22 of the publication of the summary and trend analysis is to  
23 promote the rapid dissemination of information relating to  
24 adverse incidents and malpractice claims to assist in  
25 avoidance of similar incidents and reduce morbidity and  
26 mortality.

27           (9) The internal risk manager of each licensed  
28 facility shall:

29           (a) Investigate every allegation of sexual misconduct  
30 which is made against a member of the facility's personnel who  
31 has direct patient contact, when the allegation is that the

Bill No. SB 938

Barcode 614830

1 sexual misconduct occurred at the facility or on the grounds  
2 of the facility.

3 (b) Report every allegation of sexual misconduct to  
4 the administrator of the licensed facility.

5 (c) Notify the family or guardian of the victim, if a  
6 minor, that an allegation of sexual misconduct has been made  
7 and that an investigation is being conducted.

8 (d) Report to the Department of Health every  
9 allegation of sexual misconduct, as defined in chapter 456 and  
10 the respective practice act, by a licensed health care  
11 practitioner that involves a patient.

12 (10) Any witness who witnessed or who possesses actual  
13 knowledge of the act that is the basis of an allegation of  
14 sexual abuse shall:

15 (a) Notify the local police; and

16 (b) Notify the hospital risk manager and the  
17 administrator.

18

19 For purposes of this subsection, "sexual abuse" means acts of  
20 a sexual nature committed for the sexual gratification of  
21 anyone upon, or in the presence of, a vulnerable adult,  
22 without the vulnerable adult's informed consent, or a minor.

23 "Sexual abuse" includes, but is not limited to, the acts  
24 defined in s. 794.011(1)(h), fondling, exposure of a  
25 vulnerable adult's or minor's sexual organs, or the use of the  
26 vulnerable adult or minor to solicit for or engage in  
27 prostitution or sexual performance. "Sexual abuse" does not  
28 include any act intended for a valid medical purpose or any  
29 act which may reasonably be construed to be a normal  
30 caregiving action.

31 (11) A person who, with malice or with intent to

Bill No. SB 938

Barcode 614830

1 | discredit or harm a licensed facility or any person, makes a  
2 | false allegation of sexual misconduct against a member of a  
3 | licensed facility's personnel is guilty of a misdemeanor of  
4 | the second degree, punishable as provided in s. 775.082 or s.  
5 | 775.083.

6 |       (12) In addition to any penalty imposed pursuant to  
7 | this section, the agency shall require a written plan of  
8 | correction from the facility. For a single incident or series  
9 | of isolated incidents that are nonwillful violations of the  
10 | reporting requirements of this section, the agency shall first  
11 | seek to obtain corrective action by the facility. If the  
12 | correction is not demonstrated within the timeframe  
13 | established by the agency or if there is a pattern of  
14 | nonwillful violations of this section, the agency may impose  
15 | an administrative fine, not to exceed \$5,000 for any violation  
16 | of the reporting requirements of this section. The  
17 | administrative fine for repeated nonwillful violations shall  
18 | not exceed \$10,000 for any violation. The administrative fine  
19 | for each intentional and willful violation may not exceed  
20 | \$25,000 per violation, per day. The fine for an intentional  
21 | and willful violation of this section may not exceed \$250,000.  
22 | In determining the amount of fine to be levied, the agency  
23 | shall be guided by s. 395.1065(2)(b).

24 |       (13) The agency shall have access to all licensed  
25 | facility records necessary to carry out the provisions of this  
26 | section. Except for those records of adverse medical incidents  
27 | which must be released under s. 25, Art. X of the State  
28 | Constitution and s. 395.3016, the records obtained by the  
29 | agency under subsection (6), subsection (7), or subsection (9)  
30 | are not available to the public under s. 119.07(1). The  
31 | records are not, nor shall they be discoverable or admissible

Barcode 614830

1 in any civil or administrative action, except in disciplinary  
 2 proceedings by the agency or the appropriate regulatory board,  
 3 and ~~nor shall~~ records obtained pursuant to s. 456.071 are not  
 4 ~~be~~ available to the public as part of the record of  
 5 investigation for and prosecution in disciplinary proceedings  
 6 made available to the public by the agency or the appropriate  
 7 regulatory board. However, the agency or the appropriate  
 8 regulatory board shall make available, upon written request by  
 9 a health care professional against whom probable cause has  
 10 been found, any such records which form the basis of the  
 11 determination of probable cause, except that, with respect to  
 12 medical review committee records, s. 766.101 controls.

13 (14) The meetings of the committees and governing  
 14 board of a licensed facility held solely for the purpose of  
 15 achieving the objectives of risk management as provided by  
 16 this section shall not be open to the public under the  
 17 provisions of chapter 286. The records of such meetings are  
 18 confidential and exempt from s. 119.07(1), except as provided  
 19 in subsection (13).

20 (15) The agency shall review, as part of its licensure  
 21 inspection process, the internal risk management program at  
 22 each licensed facility regulated by this section to determine  
 23 whether the program meets standards established in statutes  
 24 and rules, whether the program is being conducted in a manner  
 25 designed to reduce adverse incidents, and whether the program  
 26 is appropriately reporting incidents under this section.

27 (16) There shall be no monetary liability on the part  
 28 of, and no cause of action for damages shall arise against,  
 29 any risk manager, licensed under s. 395.10974, for the  
 30 implementation and oversight of the internal risk management  
 31 program in a facility licensed under this chapter or chapter

Bill No. SB 938

Barcode 614830

1 390 as required by this section, for any act or proceeding  
2 undertaken or performed within the scope of the functions of  
3 such internal risk management program if the risk manager acts  
4 without intentional fraud.

5 (17) A privilege against civil liability is hereby  
6 granted to any licensed risk manager or licensed facility with  
7 regard to information furnished pursuant to this chapter,  
8 unless the licensed risk manager or facility acted in bad  
9 faith or with malice in providing such information.

10 (18) If the agency, through its receipt of any reports  
11 required under this section or through any investigation, has  
12 a reasonable belief that conduct by a staff member or employee  
13 of a licensed facility is grounds for disciplinary action by  
14 the appropriate regulatory board, the agency shall report this  
15 fact to such regulatory board.

16 (19) It shall be unlawful for any person to coerce,  
17 intimidate, or preclude a risk manager from lawfully executing  
18 his or her reporting obligations pursuant to this chapter.  
19 Such unlawful action shall be subject to civil monetary  
20 penalties not to exceed \$10,000 per violation.

21 Section 4. Section 395.3025, Florida Statutes, is  
22 amended to read:

23 395.3025 Patient and personnel records; copies;  
24 examination.--

25 (1) Any licensed facility shall, upon written request,  
26 and only after discharge of the patient, furnish, in a timely  
27 manner, without delays for legal review, to any person  
28 admitted therein for care and treatment or treated thereat, or  
29 to any such person's guardian, curator, or personal  
30 representative, or in the absence of one of those persons, to  
31 the next of kin of a decedent or the parent of a minor, or to

Bill No. SB 938

Barcode 614830

1 anyone designated by such person in writing, a true and  
2 correct copy of all patient records, including X rays, and  
3 insurance information concerning such person, which records  
4 are in the possession of the licensed facility, provided the  
5 person requesting such records agrees to pay a charge. The  
6 exclusive charge for copies of patient records may include  
7 sales tax and actual postage, and, except for nonpaper records  
8 that are subject to a charge not to exceed \$2, may not exceed  
9 \$1 per page. A fee of up to \$1 may be charged for each year of  
10 records requested. These charges shall apply to all records  
11 furnished, whether directly from the facility or from a copy  
12 service providing these services on behalf of the facility.  
13 However, a patient whose records are copied or searched for  
14 the purpose of continuing to receive medical care is not  
15 required to pay a charge for copying or for the search. The  
16 licensed facility shall further allow any such person to  
17 examine the original records in its possession, or microforms  
18 or other suitable reproductions of the records, upon such  
19 reasonable terms as shall be imposed to assure that the  
20 records will not be damaged, destroyed, or altered.

21 (2) This section does not apply to records maintained  
22 at any licensed facility the primary function of which is to  
23 provide psychiatric care to its patients, or to records of  
24 treatment for any mental or emotional condition at any other  
25 licensed facility which are governed by the provisions of s.  
26 394.4615.

27 (3) This section does not apply to records of  
28 substance abuse impaired persons, which are governed by s.  
29 397.501.

30 (4) Patient records are confidential and must not be  
31 disclosed without the consent of the person to whom they

Barcode 614830

1 | pertain, but appropriate disclosure may be made without such  
2 | consent to:

3 |       (a) Licensed facility personnel and attending  
4 | physicians for use in connection with the treatment of the  
5 | patient.

6 |       (b) Licensed facility personnel only for  
7 | administrative purposes or risk management and quality  
8 | assurance functions.

9 |       (c) The agency, for purposes of health care cost  
10 | containment.

11 |       (d) In any civil or criminal action, unless otherwise  
12 | prohibited by law, upon the issuance of a subpoena from a  
13 | court of competent jurisdiction and proper notice by the party  
14 | seeking such records to the patient or his or her legal  
15 | representative.

16 |       (e) The agency upon subpoena issued pursuant to s.  
17 | 456.071, but the records obtained thereby must be used solely  
18 | for the purpose of the agency and the appropriate professional  
19 | board in its investigation, prosecution, and appeal of  
20 | disciplinary proceedings. If the agency requests copies of the  
21 | records, the facility shall charge no more than its actual  
22 | copying costs, including reasonable staff time. The records  
23 | must be sealed and must not be available to the public  
24 | pursuant to s. 119.07(1) or any other statute providing access  
25 | to records, nor may they be available to the public as part of  
26 | the record of investigation for and prosecution in  
27 | disciplinary proceedings made available to the public by the  
28 | agency or the appropriate regulatory board. However, the  
29 | agency must make available, upon written request by a  
30 | practitioner against whom probable cause has been found, any  
31 | such records that form the basis of the determination of



1 probable cause.

2           (f) The Department of Health or its agent, for the  
3 purpose of establishing and maintaining a trauma registry and  
4 for the purpose of ensuring that hospitals and trauma centers  
5 are in compliance with the standards and rules established  
6 under ss. 395.401, 395.4015, 395.4025, 395.404, 395.4045, and  
7 395.405, and for the purpose of monitoring patient outcome at  
8 hospitals and trauma centers that provide trauma care  
9 services.

10           (g) The Department of Children and Family Services or  
11 its agent, for the purpose of investigations of cases of  
12 abuse, neglect, or exploitation of children or vulnerable  
13 adults.

14           (h) The State Long-Term Care Ombudsman Council and the  
15 local long-term care ombudsman councils, with respect to the  
16 records of a patient who has been admitted from a nursing home  
17 or long-term care facility, when the councils are conducting  
18 an investigation involving the patient as authorized under  
19 part II of chapter 400, upon presentation of identification as  
20 a council member by the person making the request. Disclosure  
21 under this paragraph shall only be made after a competent  
22 patient or the patient's representative has been advised that  
23 disclosure may be made and the patient has not objected.

24           (i) A local trauma agency or a regional trauma agency  
25 that performs quality assurance activities, or a panel or  
26 committee assembled to assist a local trauma agency or a  
27 regional trauma agency in performing quality assurance  
28 activities. Patient records obtained under this paragraph are  
29 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
30 of the State Constitution.

31           (j) Organ procurement organizations, tissue banks, and

Bill No. SB 938

Barcode 614830

1 eye banks required to conduct death records reviews pursuant  
2 to s. 395.2050.

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

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

8 (m) A patient who has sought, is seeking, is  
9 undergoing, or has undergone care or treatment in a health  
10 care facility licensed under this chapter and who requests  
11 access to records of adverse medical incidents under s.  
12 395.3016, so long as the facility does not disclose the  
13 identify of a patient who is the subject of such records.

14 (5) The Department of Health may examine patient  
15 records of a licensed facility, whether held by the facility  
16 or the Agency for Health Care Administration, for the purpose  
17 of epidemiological investigations. The unauthorized release of  
18 information by agents of the department which would identify  
19 an individual patient is a misdemeanor of the first degree,  
20 punishable as provided in s. 775.082 or s. 775.083.

21 (6) Patient records shall contain information required  
22 for completion of birth, death, and fetal death certificates.

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

Bill No. SB 938

Barcode 614830

1 released under s. 25, Art. X of the State Constitution and s.  
2 395.3016, the content of such patient treatment record is  
3 confidential and exempt from the provisions of s. 119.07(1)  
4 and s. 24(a), Art. 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 that  
8 information for those purposes is prohibited.

9 (8) Patient records at hospitals and ambulatory  
10 surgical centers are exempt from disclosure under s.  
11 119.07(1), except as provided by subsections (1)-(7) and s.  
12 395.3016(1)-(5).

13 (9) A licensed facility may prescribe the content and  
14 custody of limited-access records which the facility may  
15 maintain on its employees. Such records shall be limited to  
16 information regarding evaluations of employee performance,  
17 including records forming the basis for evaluation and  
18 subsequent actions, and shall be open to inspection only by  
19 the employee and by officials of the facility who are  
20 responsible for the supervision of the employee. The custodian  
21 of limited-access employee records shall release information  
22 from such records to other employers or only upon  
23 authorization in writing from the employee or upon order of a  
24 court of competent jurisdiction. Any facility releasing such  
25 records pursuant to this part shall be considered to be acting  
26 in good faith and may not be held liable for information  
27 contained in such records, absent a showing that the facility  
28 maliciously falsified such records. Except for those records  
29 of adverse medical incidents which must be released under s.  
30 25, Art. X of the State Constitution and s. 395.3016, such  
31 limited-access employee records are exempt from the provisions

Bill No. SB 938

Barcode 614830

1 of s. 119.07(1) for a period of 5 years following ~~from~~ the  
2 date such records are designated limited-access records.

3 (10) The home addresses, telephone numbers, and  
4 photographs of employees of any licensed facility who provide  
5 direct patient care or security services; the home addresses,  
6 telephone numbers, and places of employment of the spouses and  
7 children of such persons; and the names and locations of  
8 schools and day care facilities attended by the children of  
9 such persons are confidential and exempt from s. 119.07(1) and  
10 s. 24(a), Art. I of the State Constitution. However, any state  
11 or federal agency that is authorized to have access to such  
12 information by any provision of law shall be granted such  
13 access in the furtherance of its statutory duties,  
14 notwithstanding the provisions of this subsection. The  
15 Department of Financial Services, or an agent, employee, or  
16 independent contractor of the department who is auditing for  
17 unclaimed property pursuant to chapter 717, shall be granted  
18 access to the name, address, and social security number of any  
19 employee owed unclaimed property.

20 (11) The home addresses, telephone numbers, and  
21 photographs of employees of any licensed facility who have a  
22 reasonable belief, based upon specific circumstances that have  
23 been reported in accordance with the procedure adopted by the  
24 facility, that release of the information may be used to  
25 threaten, intimidate, harass, inflict violence upon, or  
26 defraud the employee or any member of the employee's family;  
27 the home addresses, telephone numbers, and places of  
28 employment of the spouses and children of such persons; and  
29 the names and locations of schools and day care facilities  
30 attended by the children of such persons are confidential and  
31 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Bill No. SB 938

Barcode 614830

1 Constitution. However, any state or federal agency that is  
2 authorized to have access to such information by any provision  
3 of law shall be granted such access in the furtherance of its  
4 statutory duties, notwithstanding the provisions of this  
5 subsection. The licensed facility shall maintain the  
6 confidentiality of the personal information only if the  
7 employee submits a written request for confidentiality to the  
8 licensed facility.

9 Section 5. Section 395.51, Florida Statutes, is  
10 amended to read:

11 395.51 Confidentiality and quality assurance  
12 activities of trauma agencies.--

13 (1) All information which is confidential by operation  
14 of law and which is obtained by a local or regional trauma  
15 agency or a panel or committee assembled by a local or  
16 regional trauma agency pursuant to s. 395.50, shall retain its  
17 confidential status and be exempt from the provisions of s.  
18 119.07(1) and s. 24(a), Art. I of the State Constitution.

19 (2) Except for a hospital's records of adverse medical  
20 incidents which must be released under s. 25, Art. X of the  
21 State Constitution and s. 395.3016, all information that ~~which~~  
22 is confidential by operation of law and ~~which~~ is obtained by a  
23 hospital or emergency medical services provider from a local  
24 or regional trauma agency or a panel or committee assembled by  
25 a local or regional trauma agency pursuant to s. 395.50, shall  
26 retain its confidential status and is ~~shall be~~ exempt from the  
27 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
28 Constitution.

29 (3) Portions of meetings, proceedings, reports, and  
30 records of a local or regional trauma agency, or a panel or  
31 committee assembled by a local or regional trauma agency

Barcode 614830

1 pursuant to this chapter, which relate solely to patient care  
 2 quality assurance are confidential and exempt from the  
 3 provisions of s. 286.011, and s. 24(b), Art. I of the State  
 4 Constitution and are confidential and exempt from the  
 5 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 6 Constitution, respectively. Patient care quality assurance,  
 7 for the purpose of this section, shall include consideration  
 8 of specific persons, cases, incidents relevant to the  
 9 performance of quality control, and system evaluation.

10 Section 6. Section 456.057, Florida Statutes, is  
 11 amended to read:

12 456.057 Ownership and control of patient records;  
 13 report or copies of records to be furnished.--

14 (1) As used in this section, the term "records owner"  
 15 means any health care practitioner who generates a medical  
 16 record after making a physical or mental examination of, or  
 17 administering treatment or dispensing legend drugs to, any  
 18 person; any health care practitioner to whom records are  
 19 transferred by a previous records owner; or any health care  
 20 practitioner's employer, including, but not limited to, group  
 21 practices and staff-model health maintenance organizations,  
 22 provided the employment contract or agreement between the  
 23 employer and the health care practitioner designates the  
 24 employer as the records owner.

25 (2) As used in this section, the terms "records  
 26 owner," "health care practitioner," and "health care  
 27 practitioner's employer" do not include any of the following  
 28 persons or entities; furthermore, the following persons or  
 29 entities are not authorized to acquire or own medical records,  
 30 but are authorized under the confidentiality and disclosure  
 31 requirements of this section to maintain those documents

Barcode 614830

1 required by the part or chapter under which they are licensed  
2 or regulated:

3 (a) Certified nursing assistants regulated under part  
4 II of chapter 464.

5 (b) Pharmacists and pharmacies licensed under chapter  
6 465.

7 (c) Dental hygienists licensed under s. 466.023.

8 (d) Nursing home administrators licensed under part II  
9 of chapter 468.

10 (e) Respiratory therapists regulated under part V of  
11 chapter 468.

12 (f) Athletic trainers licensed under part XIII of  
13 chapter 468.

14 (g) Electrologists licensed under chapter 478.

15 (h) Clinical laboratory personnel licensed under part  
16 III of chapter 483.

17 (i) Medical physicists licensed under part IV of  
18 chapter 483.

19 (j) Opticians and optical establishments licensed or  
20 permitted under part I of chapter 484.

21 (k) Persons or entities practicing under s.  
22 627.736(7).

23 (3) This section does not apply to facilities licensed  
24 under chapter 395.

25 (4) Any health care practitioner licensed by the  
26 department or a board within the department who makes a  
27 physical or mental examination of, or administers treatment or  
28 dispenses legend drugs to, any person shall, upon request of  
29 such person or the person's legal representative, furnish, in  
30 a timely manner, without delays for legal review, copies of  
31 all reports and records relating to such examination or

Barcode 614830

1 treatment, including X rays and insurance information.  
 2 However, when a patient's psychiatric, chapter 490  
 3 psychological, or chapter 491 psychotherapeutic records are  
 4 requested by the patient or the patient's legal  
 5 representative, the health care practitioner may provide a  
 6 report of examination and treatment in lieu of copies of  
 7 records. Upon a patient's written request, complete copies of  
 8 the patient's psychiatric records shall be provided directly  
 9 to a subsequent treating psychiatrist. The furnishing of such  
 10 report or copies shall not be conditioned upon payment of a  
 11 fee for services rendered.

12 (5) (a) Except as otherwise provided in this section  
 13 and in s. 440.13(4) (c), such records may not be furnished to,  
 14 and the medical condition of a patient may not be discussed  
 15 with, any person other than the patient or the patient's legal  
 16 representative or other health care practitioners and  
 17 providers involved in the care or treatment of the patient,  
 18 except upon written authorization of the patient. However,  
 19 such records may be furnished without written authorization  
 20 under the following circumstances:

21 1. To any person, firm, or corporation that has  
 22 procured or furnished such examination or treatment with the  
 23 patient's consent.

24 2. When compulsory physical examination is made  
 25 pursuant to Rule 1.360, Florida Rules of Civil Procedure, in  
 26 which case copies of the medical records shall be furnished to  
 27 both the defendant and the plaintiff.

28 3. In any civil or criminal action, unless otherwise  
 29 prohibited by law, upon the issuance of a subpoena from a  
 30 court of competent jurisdiction and proper notice to the  
 31 patient or the patient's legal representative by the party



Bill No. SB 938

Barcode 614830

1 seeking such records.

2           4. For statistical and scientific research, provided  
3 the information is abstracted in such a way as to protect the  
4 identity of the patient or provided written permission is  
5 received from the patient or the patient's legal  
6 representative.

7           5. When a patient requests those records of adverse  
8 medical incidents which must be released under s. 25, Art. X  
9 of the State Constitution and s. 458.352, s. 459.027, or s.  
10 461.019.

11           (b) Absent a specific written release or authorization  
12 permitting utilization of patient information for solicitation  
13 or marketing the sale of goods or services, any use of that  
14 information for those purposes is prohibited.

15           (6) Except in a medical negligence action or  
16 administrative proceeding when a health care practitioner or  
17 provider is or reasonably expects to be named as a defendant  
18 and except for those records of adverse medical incidents  
19 which must be released under s. 25, Art. X of the State  
20 Constitution and s. 458.352, s. 459.027, or s. 461.019,  
21 information disclosed to a health care practitioner by a  
22 patient in the course of the care and treatment of such  
23 patient is confidential and may be disclosed only to other  
24 health care practitioners and providers involved in the care  
25 or treatment of the patient, or if permitted by written  
26 authorization from the patient or compelled by subpoena at a  
27 deposition, evidentiary hearing, or trial for which proper  
28 notice has been given.

29           (7)(a)1. The department may obtain patient records  
30 pursuant to a subpoena without written authorization from the  
31 patient if the department and the probable cause panel of the

Bill No. SB 938

Barcode 614830

1 appropriate board, if any, find reasonable cause to believe  
2 that a health care practitioner has excessively or  
3 inappropriately prescribed any controlled substance specified  
4 in chapter 893 in violation of this chapter or any  
5 professional practice act or that a health care practitioner  
6 has practiced his or her profession below that level of care,  
7 skill, and treatment required as defined by this chapter or  
8 any professional practice act and also find that appropriate,  
9 reasonable attempts were made to obtain a patient release.

10           2. The department may obtain patient records and  
11 insurance information pursuant to a subpoena without written  
12 authorization from the patient if the department and the  
13 probable cause panel of the appropriate board, if any, find  
14 reasonable cause to believe that a health care practitioner  
15 has provided inadequate medical care based on termination of  
16 insurance and also find that appropriate, reasonable attempts  
17 were made to obtain a patient release.

18           3. The department may obtain patient records, billing  
19 records, insurance information, provider contracts, and all  
20 attachments thereto pursuant to a subpoena without written  
21 authorization from the patient if the department and probable  
22 cause panel of the appropriate board, if any, find reasonable  
23 cause to believe that a health care practitioner has submitted  
24 a claim, statement, or bill using a billing code that would  
25 result in payment greater in amount than would be paid using a  
26 billing code that accurately describes the services performed,  
27 requested payment for services that were not performed by that  
28 health care practitioner, used information derived from a  
29 written report of an automobile accident generated pursuant to  
30 chapter 316 to solicit or obtain patients personally or  
31 through an agent regardless of whether the information is

Bill No. SB 938

Barcode 614830

1 derived directly from the report or a summary of that report  
2 or from another person, solicited patients fraudulently,  
3 received a kickback as defined in s. 456.054, violated the  
4 patient brokering provisions of s. 817.505, or presented or  
5 caused to be presented a false or fraudulent insurance claim  
6 within the meaning of s. 817.234(1)(a), and also find that,  
7 within the meaning of s. 817.234(1)(a), patient authorization  
8 cannot be obtained because the patient cannot be located or is  
9 deceased, incapacitated, or suspected of being a participant  
10 in the fraud or scheme, and if the subpoena is issued for  
11 specific and relevant records.

12           4. Notwithstanding subparagraphs 1.-3., when the  
13 department investigates a professional liability claim or  
14 undertakes action pursuant to s. 456.049 or s. 627.912, the  
15 department may obtain patient records pursuant to a subpoena  
16 without written authorization from the patient if the patient  
17 refuses to cooperate or if the department attempts to obtain a  
18 patient release and the failure to obtain the patient records  
19 would be detrimental to the investigation.

20           (b) Patient records, billing records, insurance  
21 information, provider contracts, and all attachments thereto  
22 obtained by the department pursuant to this subsection shall  
23 be used solely for the purpose of the department and the  
24 appropriate regulatory board in disciplinary proceedings. This  
25 section does not limit the assertion of the  
26 psychotherapist-patient privilege under s. 90.503 in regard to  
27 records of treatment for mental or nervous disorders by a  
28 medical practitioner licensed pursuant to chapter 458 or  
29 chapter 459 who has primarily diagnosed and treated mental and  
30 nervous disorders for a period of not less than 3 years,  
31 inclusive of psychiatric residency. However, the health care

Bill No. SB 938

Barcode 614830

1 practitioner shall release records of treatment for medical  
2 conditions even if the health care practitioner has also  
3 treated the patient for mental or nervous disorders. If the  
4 department has found reasonable cause under this section and  
5 the psychotherapist-patient privilege is asserted, the  
6 department may petition the circuit court for an in camera  
7 review of the records by expert medical practitioners  
8 appointed by the court to determine if the records or any part  
9 thereof are protected under the psychotherapist-patient  
10 privilege.

11 (8) (a) All patient records obtained by the department  
12 and any other documents maintained by the department which  
13 identify the patient by name are confidential and exempt from  
14 s. 119.07(1) and shall be used solely for the purpose of the  
15 department and the appropriate regulatory board in its  
16 investigation, prosecution, and appeal of disciplinary  
17 proceedings. The records shall not be available to the public  
18 as part of the record of investigation for and prosecution in  
19 disciplinary proceedings made available to the public by the  
20 department or the appropriate board.

21 (b) Notwithstanding paragraph (a), all patient records  
22 obtained by the department and any other documents maintained  
23 by the department which relate to a current or former Medicaid  
24 recipient shall be provided to the Medicaid Fraud Control Unit  
25 in the Department of Legal Affairs, upon request.

26 (9) All records owners shall develop and implement  
27 policies, standards, and procedures to protect the  
28 confidentiality and security of the medical record. Employees  
29 of records owners shall be trained in these policies,  
30 standards, and procedures.

31 (10) Records owners are responsible for maintaining a

Bill No. SB 938

Barcode 614830

1 record of all disclosures of information contained in the  
2 medical record to a third party, including the purpose of the  
3 disclosure request. The record of disclosure may be  
4 maintained in the medical record. The third party to whom  
5 information is disclosed is prohibited from further disclosing  
6 any information in the medical record without the expressed  
7 written consent of the patient or the patient's legal  
8 representative.

9 (11) Notwithstanding the provisions of s. 456.058,  
10 records owners shall place an advertisement in the local  
11 newspaper or notify patients, in writing, when they are  
12 terminating practice, retiring, or relocating, and no longer  
13 available to patients, and offer patients the opportunity to  
14 obtain a copy of their medical record.

15 (12) Notwithstanding the provisions of s. 456.058,  
16 records owners shall notify the appropriate board office when  
17 they are terminating practice, retiring, or relocating, and no  
18 longer available to patients, specifying who the new records  
19 owner is and where medical records can be found.

20 (13) Whenever a records owner has turned records over  
21 to a new records owner, the new records owner shall be  
22 responsible for providing a copy of the complete medical  
23 record, upon written request, of the patient or the patient's  
24 legal representative.

25 (14) Licensees in violation of the provisions of this  
26 section shall be disciplined by the appropriate licensing  
27 authority.

28 (15) The Attorney General is authorized to enforce the  
29 provisions of this section for records owners not otherwise  
30 licensed by the state, through injunctive relief and fines not  
31 to exceed \$5,000 per violation.

Bill No. SB 938

Barcode 614830

1           (16) A health care practitioner or records owner  
2 furnishing copies of reports or records or making the reports  
3 or records available for digital scanning pursuant to this  
4 section shall charge no more than the actual cost of copying,  
5 including reasonable staff time, or the amount specified in  
6 administrative rule by the appropriate board, or the  
7 department when there is no board.

8           (17) Nothing in this section shall be construed to  
9 limit health care practitioner consultations, as necessary.

10           (18) A records owner shall release to a health care  
11 practitioner who, as an employee of the records owner,  
12 previously provided treatment to a patient, those records that  
13 the health care practitioner actually created or generated  
14 when the health care practitioner treated the patient.  
15 Records released pursuant to this subsection shall be released  
16 only upon written request of the health care practitioner and  
17 shall be limited to the notes, plans of care, and orders and  
18 summaries that were actually generated by the health care  
19 practitioner requesting the record.

20           (19) The board, or department when there is no board,  
21 may temporarily or permanently appoint a person or entity as a  
22 custodian of medical records in the event of the death of a  
23 practitioner, the mental or physical incapacitation of the  
24 practitioner, or the abandonment of medical records by a  
25 practitioner. The custodian appointed shall comply with all  
26 provisions of this section, including the release of patient  
27 records.

28           Section 7. Section 458.352, Florida Statutes, is  
29 created to read:

30           458.352 Patients' right to know about adverse medical  
31 incidents.--

Bill No. SB 938

Barcode 614830

1       (1) For purposes of implementing s. 25, Art. X of the  
2 State Constitution, a patient who has sought, is seeking, is  
3 undergoing, or has undergone care or treatment by a physician  
4 licensed under this chapter has a right to have access to any  
5 records made or received in the course of business by the  
6 physician relating to any adverse medical incident. In  
7 providing such access, the identity of any patient involved in  
8 an incident may not be disclosed, and the privacy restrictions  
9 imposed by federal law must be maintained. This section  
10 applies only to records of an adverse medical incident that  
11 occurs on or after November 2, 2004.

12       (2) As used in this section, the phrase "adverse  
13 medical incident" means medical negligence, intentional  
14 misconduct, and any other act, neglect, or default of a health  
15 care facility or health care provider that caused or could  
16 have caused injury to or death of a patient, including, but  
17 not limited to, those incidents that are required by state or  
18 federal law to be reported to any governmental agency or body,  
19 and incidents that are reported to or reviewed by any health  
20 care facility peer review, risk management, quality assurance,  
21 credentials, or similar committee, or any representative of  
22 any such committees.

23       (3) In addition to any other procedure for producing  
24 such records provided by general law, a physician must make  
25 the records available for inspection and copying upon formal  
26 or informal request by the patient or a representative of the  
27 patient, provided that current records which have been made  
28 publicly available by publication or on the Internet may be  
29 "provided" by reference to the location at which the records  
30 are publicly available. The records must be made available in  
31 a timely manner without delay for legal review. The records

Bill No. SB 938

Barcode 614830

1 must be made available at reasonable times of day and days of  
2 the week within the physician's business hours. The charge for  
3 copies of the records must be no more than the actual cost of  
4 copying, including reasonable staff time, and the charges may  
5 not exceed \$1 per page for the first 25 pages and 25 cents per  
6 page for each page in excess of 25 pages. These charges apply  
7 to all records furnished, whether directly from the physician  
8 or from a copy service providing these services on behalf of  
9 the physician.

10       (4) The board may levy a fine of up to \$500 for a  
11 nonwillful violation and up to \$1,000 for a willful violation  
12 against a physician who fails to provide access to the records  
13 or to provide copies if requested.

14       (5) The board may levy a fine of up to \$500 for a  
15 nonwillful violation and up to \$1,000 for a willful violation  
16 against a physician who discloses the identity of a patient  
17 involved in an incident in the provision of records.

18       Section 8. Section 459.027, Florida Statutes, is  
19 created to read:

20       459.027 Patients' right to know about adverse medical  
21 incidents.--

22       (1) For purposes of implementing s. 25, Art. X of the  
23 State Constitution, a patient who has sought, is seeking, is  
24 undergoing, or has undergone care or treatment by an  
25 osteopathic physician licensed under this chapter has a right  
26 to have access to any records made or received in the course  
27 of business by the osteopathic physician relating to any  
28 adverse medical incident. In providing such access, the  
29 identity of any patient involved in an incident may not be  
30 disclosed, and the privacy restrictions imposed by federal law  
31 must be maintained. This section applies only to records of an



Bill No. SB 938

Barcode 614830

1 adverse medical incident that occurs on or after November 2,  
2 2004.

3 (2) As used in this section, the phrase "adverse  
4 medical incident" means medical negligence, intentional  
5 misconduct, and any other act, neglect, or default of a health  
6 care facility or health care provider that caused or could  
7 have caused injury to or death of a patient, including, but  
8 not limited to, those incidents that are required by state or  
9 federal law to be reported to any governmental agency or body,  
10 and incidents that are reported to or reviewed by any health  
11 care facility peer review, risk management, quality assurance,  
12 credentials, or similar committee, or any representative of  
13 any such committees.

14 (3) In addition to any other procedure for producing  
15 such records provided by general law, an osteopathic physician  
16 must make the records available for inspection and copying  
17 upon formal or informal request by the patient or a  
18 representative of the patient, provided that current records  
19 which have been made publicly available by publication or on  
20 the Internet may be "provided" by reference to the location at  
21 which the records are publicly available. The records must be  
22 made available in a timely manner without delay for legal  
23 review. The records must be made available at reasonable times  
24 of day and days of the week within the physician's business  
25 hours. The charge for copies of the records must be no more  
26 than the actual cost of copying, including reasonable staff  
27 time, and the charges may not exceed \$1 per page for the first  
28 25 pages and 25 cents per page for each page in excess of 25  
29 pages. These charges apply to all records furnished, whether  
30 directly from the physician or from a copy service providing  
31 these services on behalf of the physician.

Bill No. SB 938

Barcode 614830

1       (4) The board may levy a fine of up to \$500 for a  
2 nonwillful violation and up to \$1,000 for a willful violation  
3 against an osteopathic physician who fails to provide access  
4 to the records or to provide copies if requested.

5       (5) The board may levy a fine of up to \$500 for a  
6 nonwillful violation and up to \$1,000 for a willful violation  
7 against an osteopathic physician who discloses the identity of  
8 a patient involved in an incident in the provision of records.

9           Section 9. Section 461.019, Florida Statutes, is  
10 created to read:

11           461.019 Patients' right to know about adverse medical  
12 incidents.--

13           (1) For purposes of implementing s. 25, Art. X of the  
14 State Constitution, a patient who has sought, is seeking, is  
15 undergoing, or has undergone care or treatment by a podiatric  
16 physician licensed under this chapter has a right to have  
17 access to any records made or received in the course of  
18 business by the podiatric physician relating to any adverse  
19 medical incident. In providing such access, the identity of  
20 any patient involved in an incident may not be disclosed, and  
21 the privacy restrictions imposed by federal law must be  
22 maintained. This section applies only to records of an adverse  
23 medical incident that occurs on or after November 2, 2004.

24           (2) As used in this section, the phrase "adverse  
25 medical incident" means medical negligence, intentional  
26 misconduct, and any other act, neglect, or default of a health  
27 care facility or health care provider that caused or could  
28 have caused injury to or death of a patient, including, but  
29 not limited to, those incidents that are required by state or  
30 federal law to be reported to any governmental agency or body,  
31 and incidents that are reported to or reviewed by any health

Bill No. SB 938

Barcode 614830

1 care facility peer review, risk management, quality assurance,  
2 credentials, or similar committee, or any representative of  
3 any such committees.

4 (3) In addition to any other procedure for producing  
5 such records provided by general law, a podiatric physician  
6 must make the records available for inspection and copying  
7 upon formal or informal request by the patient or a  
8 representative of the patient, provided that current records  
9 which have been made publicly available by publication or on  
10 the Internet may be "provided" by reference to the location at  
11 which the records are publicly available. The records must be  
12 made available in a timely manner without delay for legal  
13 review. The records must be made available at reasonable times  
14 of day and days of the week within the physician's business  
15 hours. The charge for copies of the records must be no more  
16 than the actual cost of copying, including reasonable staff  
17 time, and the charges may not exceed \$1 per page for the first  
18 25 pages and 25 cents per page for each page in excess of 25  
19 pages. These charges apply to all records furnished, whether  
20 directly from the physician or from a copy service providing  
21 these services on behalf of the physician.

22 (4) The board may levy a fine of up to \$500 for a  
23 nonwillful violation and up to \$1,000 for a willful violation  
24 against a podiatric physician who fails to provide access to  
25 the records or to provide copies if requested.

26 (5) The board may levy a fine of up to \$500 for a  
27 nonwillful violation and up to \$1,000 for a willful violation  
28 against a podiatric physician who discloses the identity of a  
29 patient involved in an incident in the provision of records.

30 Section 10. This act shall take effect upon becoming a  
31 law.