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2 An act relating to adverse medical incidents;  
3 creating s. 381.028, F.S.; providing a short  
4 title; providing a purpose; defining terms;  
5 specifying patients' right of access to records  
6 relating to an adverse medical incident;  
7 prohibiting the disclosure of the identity of  
8 certain patients; providing for maintaining  
9 privacy restrictions imposed by federal law;  
10 providing for the applicability of s. 25, Art.  
11 X of the State Constitution; providing for  
12 applicability of this section; providing  
13 restrictions upon the use of the records;  
14 providing for the identification and production  
15 of the records; providing for fees charged for  
16 copies of records; providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Section 381.028, Florida Statutes, is  
21 created to read:

22 381.028 Adverse medical incidents.--

23 (1) SHORT TITLE.--This section may be cited as the  
24 "Patients' Right-to-Know About Adverse Medical Incidents Act."

25 (2) PURPOSE.--It is the purpose of this act to  
26 implement s. 25, Art. X of the State Constitution. The  
27 Legislature finds that this section of the State Constitution  
28 is intended to grant patient access to records of adverse  
29 medical incidents, which records were made or received in the  
30 course of business by a health care facility or provider, and  
31 not to repeal or otherwise modify existing laws governing the

1 use of these records and the information contained therein.  
2 The Legislature further finds that all existing laws extending  
3 criminal and civil immunity to persons providing information  
4 to quality-of-care committees or organizations and all  
5 existing laws concerning the discoverability or admissibility  
6 into evidence of records of an adverse medical incident in any  
7 judicial or administrative proceeding remain in full force and  
8 effect.

9 (3) DEFINITIONS.--As used in s. 25, Art. X of the  
10 State Constitution and this act, the term:

11 (a) "Agency" means the Agency for Health Care  
12 Administration.

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

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

26 (d) "Have access to any records" means, in addition to  
27 any other procedure for producing the records provided by  
28 general law, making the records available for inspection and  
29 copying upon formal or informal request by the patient or a  
30 representative of the patient, provided that current records  
31 that have been made publicly available by publication or on

1 the Internet may be provided by reference to the location at  
2 which the records are publicly available.

3 (e) "Health care provider" means a physician licensed  
4 under chapter 458, chapter 459, or chapter 461.

5 (f) "Health care facility" means a facility licensed  
6 under chapter 395.

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

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

14 (i) "Privacy restrictions imposed by federal law"  
15 means the provisions relating to the disclosure of patient  
16 privacy information under federal law, including, but not  
17 limited to, the Health Insurance Portability and  
18 Accountability Act of 1996 (HIPAA), Public Law 104-91, and its  
19 implementing regulations, the Federal Privacy Act, 5 U.S.C. s.  
20 552(a), and its implementing regulations, and any other  
21 federal law, including, but not limited to, federal common law  
22 and decisional law, that would prohibit the disclosure of  
23 patient privacy information.

24 (j) "Records" means the final report of any adverse  
25 medical incident. Medical records that are not the final  
26 report of any adverse medical incident, including drafts or  
27 other nonfinal versions; notes; and any documents or portions  
28 thereof which constitute, contain, or reflect any  
29 attorney-client communications or any attorney-client work  
30 product may not be considered "records" for purposes of s. 25,  
31 Art. X of the State Constitution and this act.

1           (k) "Representative of the patient" means a parent of  
2 a minor patient, a court-appointed guardian for the patient, a  
3 health care surrogate, or a person holding a power of attorney  
4 or notarized consent appropriately executed by the patient  
5 granting permission to a health care facility or health care  
6 provider to disclose the patient's health care information to  
7 that person. In the case of a deceased patient, the term also  
8 means the personal representative of the estate of the  
9 deceased patient; the deceased patient's surviving spouse,  
10 surviving parent, or surviving adult child; the parent or  
11 guardian of a surviving minor child of the deceased patient;  
12 or the attorney for any such person.

13           (4) PATIENTS' RIGHT OF ACCESS.--Patients have a right  
14 to have access to any records made or received in the course  
15 of business by a health care facility or health care provider  
16 relating to any adverse medical incident. In providing access  
17 to these records, the health care facility or health care  
18 provider may not disclose the identity of patients involved in  
19 the incidents and shall maintain any privacy restrictions  
20 imposed by federal law.

21           (5) APPLICABILITY.--Section 25, Art. X of the State  
22 Constitution applies to records created, incidents occurring,  
23 and actions pending on or after November 2, 2004. Section 25,  
24 Art. X of the State Constitution does not apply to records  
25 created, incidents occurring, or actions pending before  
26 November 2, 2004. A patient requesting records on or after  
27 November 2, 2008, shall be eligible to receive records created  
28 within 4 years before the date of the request.

29           (6) USE OF RECORDS.--

30           (a) This section does not repeal or otherwise alter  
31 any existing restrictions on the discoverability or

1 admissibility of records relating to adverse medical incidents  
2 otherwise provided by law, including, but not limited to,  
3 those contained in ss. 395.0191, 395.0193, 395.0197, 766.101,  
4 and 766.1016, or repeal or otherwise alter any immunity  
5 provided to, or prohibition against compelling testimony by,  
6 persons providing information or participating in any peer  
7 review panel, medical review committee, hospital committee, or  
8 other hospital board otherwise provided by law, including, but  
9 not limited to, ss. 395.0191, 395.0193, 766.101, and 766.1016.

10 (b) Except as otherwise provided by act of the  
11 Legislature, records of adverse medical incidents, including  
12 any information contained therein, obtained under s. 25, Art.  
13 X of the State Constitution, are not discoverable or  
14 admissible into evidence and may not be used for any purpose,  
15 including impeachment, in any civil or administrative action  
16 against a health care facility or health care provider. This  
17 includes information relating to performance or  
18 quality-improvement initiatives and information relating to  
19 the identity of reviewers, complainants, or any person  
20 providing information contained in or used in, or any person  
21 participating in the creation of the records of adverse  
22 medical incidents.

23 (7) PRODUCTION OF RECORDS.--

24 (a) Pursuant to s. 25, Art. X of the State  
25 Constitution, the adverse medical incident records to which a  
26 patient is granted access are those of the facility or  
27 provider of which he or she is a patient and which pertain to  
28 any adverse medical incident affecting the patient or any  
29 other patient which involves the same or substantially similar  
30 condition, treatment, or diagnosis as that of the patient  
31 requesting access.

1           (b)1. Using the process provided in s. 395.0197, the  
2 health care facility shall be responsible for identifying  
3 records as records of an adverse medical incident, as defined  
4 in s. 25, Art. X of the State Constitution.

5           2. Using the process provided in s. 458.351, the  
6 health care provider shall be responsible for identifying  
7 records as records of an adverse medical incident, as defined  
8 in s. 25, Art. X of the State Constitution, occurring in an  
9 office setting.

10           (c)1. Fees charged by a health care facility for  
11 copies of records requested by a patient under s. 25, Art. X  
12 of the State Constitution may not exceed the reasonable and  
13 actual cost of complying with the request, including a  
14 reasonable charge for the staff time necessary to search for  
15 records and prevent the disclosure of the identity of any  
16 patient involved in the adverse medical incident through  
17 redaction or other means as required by the Health Insurance  
18 Portability and Accountability Act of 1996 or its implementing  
19 regulations. The health care facility may require payment, in  
20 full or in part, before acting on the records request.

21           2. Fees charged by a health care provider for copies  
22 of records requested by a patient under s. 25, Art. X of the  
23 State Constitution may not exceed the amount established under  
24 s. 456.057(16), which may include a reasonable charge for the  
25 staff time necessary to prevent the disclosure of the identity  
26 of any patient involved in the adverse medical incident  
27 through redaction or other means as required by the Health  
28 Insurance Portability and Accountability Act of 1996 or its  
29 implementing regulations. The health care provider may require  
30 payment, in full or in part, before acting on the records  
31 request.

1           (d)1. Requests for production of adverse medical  
2 incident records shall be processed by the health care  
3 facility or health care provider in a timely manner, after  
4 having a reasonable opportunity to determine whether or not  
5 the requested record is a record subject to disclosure and to  
6 prevent the disclosure of the identity of any patient involved  
7 in the adverse medical incident through redaction or other  
8 means.

9           2. A request for production of records must be  
10 submitted in writing and must identify the patient requesting  
11 access to the records by name, address, and the last four  
12 digits of the patient's social security number; describe the  
13 patient's condition, treatment, or diagnosis; and provide the  
14 name of the health care providers whose records are being  
15 sought.

16           Section 2. This act shall take effect upon becoming a  
17 law.