

1 A bill to be entitled
2 An act relating to medical records; amending s.
3 456.057, F.S.; providing definitions; requiring
4 a health care practitioner's employer who is a
5 records owner and a records custodian to comply
6 with specified requirements for confidentiality
7 and disclosure; amending s. 456.42, F.S.;
8 providing requirements for prescriptions of
9 medicinal drugs by health care practitioners
10 which are electronically generated or
11 transmitted; creating s. 456.43, F.S.;
12 regulating electronic prescribing for medicinal
13 drugs; providing restrictions for electronic
14 prescribing software; providing definitions;
15 authorizing electronic prescribing software to
16 show information regarding a payor's formulary
17 under certain circumstances; amending s.
18 465.025, F.S.; specifying requirements for a
19 prescriber to prevent generic substitution of
20 brand name drugs when a prescription is
21 electronically transmitted or generated;
22 amending s. 381.028, F.S.; conforming a
23 cross-reference; providing an effective date.

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25 Be It Enacted by the Legislature of the State of Florida:
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27 Section 1. Present subsections (3) through (19) of
28 section 456.057, Florida Statutes, are redesignated as
29 subsections (5) through (21), respectively, and new
30 subsections (3) and (4) are added to that section, to read:
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1 456.057 Ownership and control of patient records;
2 report or copies of records to be furnished.--

3 (3) As used in this section, the term "records
4 custodian" means any person or entity that:

5 (a) Maintains documents that are authorized in
6 subsection (2); or

7 (b) Obtains medical records from a records owner.

8 (4) Any health care practitioner's employer who is a
9 records owner and any records custodian shall maintain records
10 or documents as provided under the confidentiality and
11 disclosure requirements of this section.

12 Section 2. Section 456.42, Florida Statutes, is
13 amended to read:

14 456.42 Written prescriptions for medicinal drugs.--A
15 written prescription for a medicinal drug issued by a health
16 care practitioner licensed by law to prescribe such drug must
17 be legibly printed or typed so as to be capable of being
18 understood by the pharmacist filling the prescription; must
19 contain the name of the prescribing practitioner, the name and
20 strength of the drug prescribed, the quantity of the drug
21 prescribed in both textual and numerical formats, and the
22 directions for use of the drug; must be dated with the month
23 written out in textual letters; and must be signed by the
24 prescribing practitioner on the day when issued. However, a
25 prescription that is electronically generated and transmitted
26 must contain the name of the prescribing practitioner, the
27 name and strength of the drug prescribed, the quantity of the
28 drug prescribed in numerical format, and the direction for use
29 of the drug and must be dated and signed by the prescribing
30 practitioner only on the day issued, which signature may be in
31 an electronic format as defined in s. 668.003(4).

1 Section 3. Section 456.43, Florida Statutes, is
2 created to read:

3 456.43 Electronic prescribing for medicinal drugs.--

4 (1) Electronic prescribing shall not interfere with a
5 patient's freedom to choose a pharmacy.

6 (2) Electronic prescribing software shall not use any
7 means or permit any other person to use any means, including,
8 but not limited to, advertising, instant messaging, and pop-up
9 ads, to influence or attempt to influence, through economic
10 incentives or otherwise, the prescribing decision of a
11 prescribing practitioner at the point of care. Such means
12 shall not be triggered or in specific response to the input,
13 selection, or act of a prescribing practitioner or his or her
14 agent in prescribing a certain pharmaceutical or directing a
15 patient to a certain pharmacy.

16 (a) The term "prescribing decision" means a
17 prescribing practitioner's decision to prescribe a certain
18 pharmaceutical or direct a patient to a certain pharmacy.

19 (b) The term "point of care" means the time that a
20 prescribing practitioner or his or her agent is in the act of
21 prescribing a certain pharmaceutical or directing a patient to
22 a certain pharmacy.

23 (3) Electronic prescribing software may show
24 information regarding a payor's formulary as long as nothing
25 is designed to preclude or make more difficult the act of a
26 prescribing practitioner or patient selecting any particular
27 pharmacy or pharmaceutical.

28 Section 4. Subsection (2) of section 465.025, Florida
29 Statutes, is amended to read:

30 465.025 Substitution of drugs.--
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1 (2) A pharmacist who receives a prescription for a
 2 brand name drug shall, unless requested otherwise by the
 3 purchaser, substitute a less expensive, generically equivalent
 4 drug product that is:

5 (a) Distributed by a business entity doing business,
 6 and subject to suit and service of legal process, in the
 7 United States; and

8 (b) Listed in the formulary of generic and brand name
 9 drug products as provided in subsection (5) for the brand name
 10 drug prescribed,

11
 12 unless the prescriber writes the words "MEDICALLY NECESSARY,"
 13 in her or his own handwriting, on the face of a written
 14 prescription; ~~or~~ unless, in the case of an oral prescription,
 15 the prescriber expressly indicates to the pharmacist that the
 16 brand name drug prescribed is medically necessary; or unless,
 17 in the case of a prescription that is electronically generated
 18 and transmitted, the prescriber makes an overt act when
 19 transmitting the prescription to indicate that the brand name
 20 drug prescribed is medically necessary. When done in
 21 conjunction with the electronic transmission of the
 22 prescription, the prescriber's overt act indicates to the
 23 pharmacist that the brand name drug prescribed is medically
 24 necessary.

25 Section 5. Paragraph (c) of subsection (7) of section
 26 381.028, Florida Statutes, is amended to read:

27 381.028 Adverse medical incidents.--

28 (7) PRODUCTION OF RECORDS.--

29 (c)1. Fees charged by a health care facility for
 30 copies of records requested by a patient under s. 25, Art. X
 31 of the State Constitution may not exceed the reasonable and

1 actual cost of complying with the request, including a
2 reasonable charge for the staff time necessary to search for
3 records and prevent the disclosure of the identity of any
4 patient involved in the adverse medical incident through
5 redaction or other means as required by the Health Insurance
6 Portability and Accountability Act of 1996 or its implementing
7 regulations. The health care facility may require payment, in
8 full or in part, before acting on the records request.

9 2. Fees charged by a health care provider for copies
10 of records requested by a patient under s. 25, Art. X of the
11 State Constitution may not exceed the amount established under
12 s. 456.057(18) ~~s. 456.057(16)~~, which may include a reasonable
13 charge for the staff time necessary to prevent the disclosure
14 of the identity of any patient involved in the adverse medical
15 incident through redaction or other means as required by the
16 Health Insurance Portability and Accountability Act of 1996 or
17 its implementing regulations. The health care provider may
18 require payment, in full or in part, before acting on the
19 records request.

20 Section 6. This act shall take effect July 1, 2006.
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