

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.

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.

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

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

29 465.025 Substitution of drugs.--

30 (2) A pharmacist who receives a prescription for a  
31 brand name drug shall, unless requested otherwise by the

1 purchaser, substitute a less expensive, generically equivalent  
2 drug product that is:

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

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

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

23 Section 5. Paragraph (c) of subsection (7) of section  
24 381.028, Florida Statutes, is amended to read:

25 381.028 Adverse medical incidents.--

26 (7) PRODUCTION OF RECORDS.--

27 (c)1. Fees charged by a health care facility for  
28 copies of records requested by a patient under s. 25, Art. X  
29 of the State Constitution may not exceed the reasonable and  
30 actual cost of complying with the request, including a  
31 reasonable charge for the staff time necessary to search for

1 records and prevent the disclosure of the identity of any  
2 patient involved in the adverse medical incident through  
3 redaction or other means as required by the Health Insurance  
4 Portability and Accountability Act of 1996 or its implementing  
5 regulations. The health care facility may require payment, in  
6 full or in part, before acting on the records request.

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

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