

By Senator Campbell

32-1194-06

See HB

1 A bill to be entitled

2 An act relating to patient records; amending s.

3 395.3025, F.S.; requiring disclosure by a

4 licensed facility concerning individually

5 identifiable health information transmitted to

6 a site outside the United States; requiring

7 notice to and consent of the patient; providing

8 for renewal and revocation of consent;

9 providing for a consent form and contents

10 thereof; prohibiting discrimination based on

11 refusal to grant consent; providing an

12 effective date.

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

16 Section 1. Section 395.3025, Florida Statutes, is
17 amended to read:

18 395.3025 Patient and personnel records; copies;
19 examination; transmission of records; consent.--

20 (1) Any licensed facility shall, upon written request,

21 and only after discharge of the patient, furnish, in a timely

22 manner, without delays for legal review, to any person

23 admitted therein for care and treatment or treated thereat, or

24 to any such person's guardian, curator, or personal

25 representative, or in the absence of one of those persons, to

26 the next of kin of a decedent or the parent of a minor, or to

27 anyone designated by such person in writing, a true and

28 correct copy of all patient records, including X rays, and

29 insurance information concerning such person, which records

30 are in the possession of the licensed facility, provided the

31 person requesting such records agrees to pay a charge. The

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

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

22 (3) This section does not apply to records of
23 substance abuse impaired persons, which are governed by s.
24 397.501.

25 (4) Patient records are confidential and must not be
26 disclosed without the consent of the person to whom they
27 pertain, but appropriate disclosure may be made without such
28 consent to:

29 (a) Licensed facility personnel and attending
30 physicians for use in connection with the treatment of the
31 patient.

1 (b) Licensed facility personnel only for
2 administrative purposes or risk management and quality
3 assurance functions.

4 (c) The agency, for purposes of health care cost
5 containment.

6 (d) In any civil or criminal action, unless otherwise
7 prohibited by law, upon the issuance of a subpoena from a
8 court of competent jurisdiction and proper notice by the party
9 seeking such records to the patient or his or her legal
10 representative.

11 (e) The agency upon subpoena issued pursuant to s.
12 456.071, but the records obtained thereby must be used solely
13 for the purpose of the agency and the appropriate professional
14 board in its investigation, prosecution, and appeal of
15 disciplinary proceedings. If the agency requests copies of the
16 records, the facility shall charge no more than its actual
17 copying costs, including reasonable staff time. The records
18 must be sealed and must not be available to the public
19 pursuant to s. 119.07(1) or any other statute providing access
20 to records, nor may they be available to the public as part of
21 the record of investigation for and prosecution in
22 disciplinary proceedings made available to the public by the
23 agency or the appropriate regulatory board. However, the
24 agency must make available, upon written request by a
25 practitioner against whom probable cause has been found, any
26 such records that form the basis of the determination of
27 probable cause.

28 (f) The Department of Health or its agent, for the
29 purpose of establishing and maintaining a trauma registry and
30 for the purpose of ensuring that hospitals and trauma centers
31 are in compliance with the standards and rules established

1 | under ss. 395.401, 395.4015, 395.4025, 395.404, 395.4045, and
2 | 395.405, and for the purpose of monitoring patient outcome at
3 | hospitals and trauma centers that provide trauma care
4 | services.

5 | (g) The Department of Children and Family Services or
6 | its agent, for the purpose of investigations of cases of
7 | abuse, neglect, or exploitation of children or vulnerable
8 | adults.

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

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

26 | (j) Organ procurement organizations, tissue banks, and
27 | eye banks required to conduct death records reviews pursuant
28 | to s. 395.2050.

29 | (k) The Medicaid Fraud Control Unit in the Department
30 | of Legal Affairs pursuant to s. 409.920.

31 |

1 (1) The Department of Financial Services, or an agent,
2 employee, or independent contractor of the department who is
3 auditing for unclaimed property pursuant to chapter 717.

4 (m) A regional poison control center for purposes of
5 treating a poison episode under evaluation, case management of
6 poison cases, or compliance with data collection and reporting
7 requirements of s. 395.1027 and the professional organization
8 that certifies poison control centers in accordance with
9 federal law.

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

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

19 (7)(a) If the content of any record of patient
20 treatment is provided under this section, the recipient, if
21 other than the patient or the patient's representative, may
22 use such information only for the purpose provided and may not
23 further disclose any information to any other person or
24 entity, unless expressly permitted by the written consent of
25 the patient. A general authorization for the release of
26 medical information is not sufficient for this purpose. The
27 content of such patient treatment record is confidential and
28 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
29 I of the State Constitution.

30 (b) Absent a specific written release or authorization
31 permitting utilization of patient information for solicitation

1 or marketing the sale of goods or services, any use of that
2 information for those purposes is prohibited.

3 (c) A person or entity that has contracted or
4 subcontracted with a licensed facility as defined in s.
5 395.002(17) to receive individually identifiable health
6 information must disclose to the licensed facility whether any
7 of the information will be transmitted to a site outside the
8 United States.

9 (d) A licensed facility, or person or entity that has
10 contracted or subcontracted with a licensed facility, may not
11 transmit individually identifiable health information to a
12 site outside the United States unless all of the following
13 apply:

14 1. The licensed facility has disclosed to the patient
15 upon admission, or as soon as practicable after admission,
16 that his or her individually identifiable health information
17 may be transmitted to a site outside the United States.

18 2. The licensed facility has obtained written consent
19 from the patient to transmit his or her individually
20 identifiable health information to a site outside the United
21 States.

22 3. The consent of the patient has been granted or
23 renewed on an annual basis.

24 4. The patient has been informed that he or she may
25 revoke consent in writing at any time.

26 (e) Except for a request for health care services
27 initiated by a person seeking diagnosis or treatment outside
28 the United States, a licensed facility must use a form to
29 obtain consent to transmit individually identifiable health
30 information to a site outside the United States. The form must
31 meet the following criteria:

1 1. It must be a separate document and may not be
2 attached to any other document.

3 2. It must be dated and signed by the patient whose
4 health care information is identifiable.

5 3. It must clearly state all of the following:

6 a. That by signing, the patient is consenting to the
7 transmission of his or her individually identifiable health
8 information to a site outside the United States where the
9 information is not protected by United States confidentiality
10 laws.

11 b. That the licensed facility is obligated to obtain
12 the consent of the patient annually.

13 c. That the patient may revoke consent at any time
14 using a procedure specified on the form.

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16 A licensed facility may not discriminate against an individual
17 or deny an individual health care service because the
18 individual has not provided consent pursuant to this
19 subsection.

20 (8) Patient records at hospitals and ambulatory
21 surgical centers are exempt from disclosure under s.
22 119.07(1), except as provided by subsections (1)-(5).

23 (9) A licensed facility may prescribe the content and
24 custody of limited-access records which the facility may
25 maintain on its employees. Such records shall be limited to
26 information regarding evaluations of employee performance,
27 including records forming the basis for evaluation and
28 subsequent actions, and shall be open to inspection only by
29 the employee and by officials of the facility who are
30 responsible for the supervision of the employee. The custodian
31 of limited-access employee records shall release information

1 | from such records to other employers or only upon
2 | authorization in writing from the employee or upon order of a
3 | court of competent jurisdiction. Any facility releasing such
4 | records pursuant to this part shall be considered to be acting
5 | in good faith and may not be held liable for information
6 | contained in such records, absent a showing that the facility
7 | maliciously falsified such records. Such limited-access
8 | employee records are exempt from the provisions of s.
9 | 119.07(1) for a period of 5 years from the date such records
10 | are designated limited-access records.

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

28 | (11) The home addresses, telephone numbers, and
29 | photographs of employees of any licensed facility who have a
30 | reasonable belief, based upon specific circumstances that have
31 | been reported in accordance with the procedure adopted by the

1 facility, that release of the information may be used to
2 threaten, intimidate, harass, inflict violence upon, or
3 defraud the employee or any member of the employee's family;
4 the home addresses, telephone numbers, and places of
5 employment of the spouses and children of such persons; and
6 the names and locations of schools and day care facilities
7 attended by the children of such persons are confidential and
8 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
9 Constitution. However, any state or federal agency that is
10 authorized to have access to such information by any provision
11 of law shall be granted such access in the furtherance of its
12 statutory duties, notwithstanding the provisions of this
13 subsection. The licensed facility shall maintain the
14 confidentiality of the personal information only if the
15 employee submits a written request for confidentiality to the
16 licensed facility.

17 Section 2. This act shall take effect July 1, 2006.
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