

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

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

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 23 Section 1. Present subsections (3) through (19) of section
 24 456.057, Florida Statutes, are renumbered as subsections (5)
 25 through (21), respectively, and new subsections (3) and (4) are
 26 added to that section to read:

27 456.057 Ownership and control of patient records; report
 28 or copies of records to be furnished.--

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

31 (a) Maintains documents that are authorized in subsection
 32 (2); or

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

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

38 Section 2. Section 456.42, Florida Statutes, is amended to
 39 read:

40 456.42 Written prescriptions for medicinal drugs.--A
 41 written prescription for a medicinal drug issued by a health
 42 care practitioner licensed by law to prescribe such drug must be
 43 legibly printed or typed so as to be capable of being understood
 44 by the pharmacist filling the prescription; must contain the
 45 name of the prescribing practitioner, the name and strength of
 46 the drug prescribed, the quantity of the drug prescribed in both
 47 textual and numerical formats, and the directions for use of the
 48 drug; must be dated with the month written out in textual
 49 letters; and must be signed by the prescribing practitioner on
 50 the day when issued. However, a prescription that is
 51 electronically generated and transmitted must contain the name
 52 of the prescribing practitioner, the name and strength of the
 53 drug prescribed, the quantity of the drug prescribed in
 54 numerical format, and the directions for use of the drug and
 55 must be dated and signed by the prescribing practitioner only on
 56 the day issued, which signature may be in an electronic format

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57 as defined by s. 668.003(4).

58 Section 3. Section 456.43, Florida Statutes, is created to
59 read:

60 456.43 Electronic prescribing for medicinal drugs.--

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

63 (2) Electronic prescribing software shall not use any
64 means or permit any other person to use any means, including,
65 but not limited to, advertising, instant messaging, and pop-up
66 ads, to influence or attempt to influence, through economic
67 incentives or otherwise, the prescribing decision of a physician
68 at the point of care. Such means shall not be triggered or in
69 specific response to the input, selection, or act of a physician
70 or his or her agent in prescribing a certain pharmaceutical or
71 directing a patient to a certain pharmacy.

72 (a) The term "prescribing decision" means a physician's
73 decision to prescribe a certain pharmaceutical or direct a
74 patient to a certain pharmacy.

75 (b) The term "point of care" means the time that a
76 physician or his or her agent is in the act of prescribing a
77 certain pharmaceutical or directing a patient to a certain
78 pharmacy.

79 (3) Electronic prescribing software may show information
80 regarding a payor's formulary as long as nothing is designed to
81 preclude or make more difficult the act of a physician or
82 patient selecting any particular pharmacy or pharmaceutical.

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

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85 465.025 Substitution of drugs.--

86 (2) A pharmacist who receives a prescription for a brand
 87 name drug shall, unless requested otherwise by the purchaser,
 88 substitute a less expensive, generically equivalent drug product
 89 that is:

90 (a) Distributed by a business entity doing business, and
 91 subject to suit and service of legal process, in the United
 92 States; and

93 (b) Listed in the formulary of generic and brand name drug
 94 products as provided in subsection (5) for the brand name drug
 95 prescribed,

96
 97 unless the prescriber writes the words "MEDICALLY NECESSARY," in
 98 her or his own handwriting, on the face of a written
 99 prescription; ~~or~~ unless, in the case of an oral prescription,
 100 the prescriber expressly indicates to the pharmacist that the
 101 brand name drug prescribed is medically necessary; or unless, in
 102 the case of a prescription that is electronically generated and
 103 transmitted, the prescriber makes an overt act when transmitting
 104 the prescription to indicate that the brand name drug prescribed
 105 is medically necessary. When done in conjunction with the
 106 electronic transmission of the prescription, the prescriber's
 107 overt act indicates to the pharmacist that the brand name drug
 108 prescribed is medically necessary.

109 Section 5. Paragraph (c) of subsection (7) of section
 110 381.028, Florida Statutes, is amended to read:

111 381.028 Adverse medical incidents.--

112 (7) PRODUCTION OF RECORDS.--

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113 (c)1. Fees charged by a health care facility for copies of
114 records requested by a patient under s. 25, Art. X of the State
115 Constitution may not exceed the reasonable and actual cost of
116 complying with the request, including a reasonable charge for
117 the staff time necessary to search for records and prevent the
118 disclosure of the identity of any patient involved in the
119 adverse medical incident through redaction or other means as
120 required by the Health Insurance Portability and Accountability
121 Act of 1996 or its implementing regulations. The health care
122 facility may require payment, in full or in part, before acting
123 on the records request.

124 2. Fees charged by a health care provider for copies of
125 records requested by a patient under s. 25, Art. X of the State
126 Constitution may not exceed the amount established under s.
127 456.057(18)~~(16)~~, which may include a reasonable charge for the
128 staff time necessary to prevent the disclosure of the identity
129 of any patient involved in the adverse medical incident through
130 redaction or other means as required by the Health Insurance
131 Portability and Accountability Act of 1996 or its implementing
132 regulations. The health care provider may require payment, in
133 full or in part, before acting on the records request.

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