

CHAMBER ACTION

1 The Health & Families Council recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to medical records; amending s. 456.057,
7 F.S.; providing definitions; requiring a health care
8 practitioner's employer who is a records owner and a
9 records custodian to comply with specified requirements
10 for confidentiality and disclosure; amending s. 456.42,
11 F.S.; providing requirements for prescriptions of
12 medicinal drugs by health care practitioners that are
13 electronically generated and transmitted; creating s.
14 456.43, F.S.; regulating electronic prescribing for
15 medicinal drugs; providing restrictions for electronic
16 prescribing software; providing definitions; authorizing
17 electronic prescribing software to show information
18 regarding a payor's formulary under certain circumstances;
19 providing that payors or providers are not limited from
20 implementing utilization management tools; amending s.
21 465.025, F.S.; specifying requirements for a prescriber to
22 prevent generic substitution for brand name drugs when a
23 prescription is electronically transmitted and generated;

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24 | amending s. 381.028, F.S.; correcting a cross-reference;
25 | providing an effective date.

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27 | Be It Enacted by the Legislature of the State of Florida:

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29 | Section 1. Present subsections (3) through (19) of section
30 | 456.057, Florida Statutes, are renumbered as subsections (5)
31 | through (21), respectively, and new subsections (3) and (4) are
32 | added to that section to read:

33 | 456.057 Ownership and control of patient records; report
34 | or copies of records to be furnished.--

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

37 | (a) Maintains documents that are authorized in subsection
38 | (2); or

39 | (b) Obtains medical records from a records owner.

40 | (4) Any health care practitioner's employer who is a
41 | records owner and any records custodian shall maintain records
42 | or documents as provided under the confidentiality and
43 | disclosure requirements of this section.

44 | Section 2. Section 456.42, Florida Statutes, is amended to
45 | read:

46 | 456.42 Written prescriptions for medicinal drugs.--A
47 | written prescription for a medicinal drug issued by a health
48 | care practitioner licensed by law to prescribe such drug must be
49 | legibly printed or typed so as to be capable of being understood
50 | by the pharmacist filling the prescription; must contain the
51 | name of the prescribing practitioner, the name and strength of

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52 | the drug prescribed, the quantity of the drug prescribed in both
53 | textual and numerical formats, and the directions for use of the
54 | drug; must be dated with the month written out in textual
55 | letters; and must be signed by the prescribing practitioner on
56 | the day when issued. However, a prescription that is
57 | electronically generated and transmitted must contain the name
58 | of the prescribing practitioner, the name and strength of the
59 | drug prescribed, the quantity of the drug prescribed in
60 | numerical format, and the directions for use of the drug and
61 | must be dated and signed by the prescribing practitioner only on
62 | the day issued, which signature may be in an electronic format
63 | as defined by s. 668.003(4).

64 | Section 3. Section 456.43, Florida Statutes, is created to
65 | read:

66 | 456.43 Electronic prescribing for medicinal drugs.--

67 | (1) Electronic prescribing shall not interfere with a
68 | patient's freedom to choose a pharmacy.

69 | (2) Electronic prescribing software shall not use any
70 | means or permit any other person to use any means, including,
71 | but not limited to, advertising, instant messaging, and pop-up
72 | ads, to influence or attempt to influence, through economic
73 | incentives or otherwise, the prescribing decision of a
74 | prescribing practitioner at the point of care. Such means shall
75 | not be triggered or in specific response to the input,
76 | selection, or act of a prescribing practitioner or his or her
77 | agent in prescribing a certain pharmaceutical or directing a
78 | patient to a certain pharmacy.

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79 | (a) The term "prescribing decision" means a prescribing
80 | practitioner's decision to prescribe a certain pharmaceutical.

81 | (b) The term "point of care" means the time that a
82 | prescribing practitioner or his or her agent is in the act of
83 | prescribing a certain pharmaceutical.

84 | (3) Electronic prescribing software may show information
85 | regarding a payor's formulary as long as nothing is designed to
86 | preclude or make more difficult the acts of a practitioner in
87 | prescribing any particular pharmaceutical or a patient in
88 | selecting a particular pharmacy.

89 | (4) This section does not limit a payor or provider from
90 | implementing utilization management tools, including, but not
91 | limited to, utilization review, a quality assurance program, a
92 | continuity of care system, a disease management system, step
93 | therapy, or prior authorization system.

94 | Section 4. Subsection (2) of section 465.025, Florida
95 | Statutes, is amended to read:

96 | 465.025 Substitution of drugs.--

97 | (2) A pharmacist who receives a prescription for a brand
98 | name drug shall, unless requested otherwise by the purchaser,
99 | substitute a less expensive, generically equivalent drug product
100 | that is:

101 | (a) Distributed by a business entity doing business, and
102 | subject to suit and service of legal process, in the United
103 | States; and

104 | (b) Listed in the formulary of generic and brand name drug
105 | products as provided in subsection (5) for the brand name drug
106 | prescribed,

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108 unless the prescriber writes the words "MEDICALLY NECESSARY," in
109 her or his own handwriting, on the face of a written
110 prescription; ~~or~~ unless, in the case of an oral prescription,
111 the prescriber expressly indicates to the pharmacist that the
112 brand name drug prescribed is medically necessary; or unless, in
113 the case of a prescription that is electronically generated and
114 transmitted, the prescriber makes an overt act when transmitting
115 the prescription to indicate that the brand name drug prescribed
116 is medically necessary. When done in conjunction with the
117 electronic transmission of the prescription, the prescriber's
118 overt act indicates to the pharmacist that the brand name drug
119 prescribed is medically necessary.

120 Section 5. Paragraph (c) of subsection (7) of section
121 381.028, Florida Statutes, is amended to read:

122 381.028 Adverse medical incidents.--

123 (7) PRODUCTION OF RECORDS.--

124 (c)1. Fees charged by a health care facility for copies of
125 records requested by a patient under s. 25, Art. X of the State
126 Constitution may not exceed the reasonable and actual cost of
127 complying with the request, including a reasonable charge for
128 the staff time necessary to search for records and prevent the
129 disclosure of the identity of any patient involved in the
130 adverse medical incident through redaction or other means as
131 required by the Health Insurance Portability and Accountability
132 Act of 1996 or its implementing regulations. The health care
133 facility may require payment, in full or in part, before acting
134 on the records request.

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135 2. Fees charged by a health care provider for copies of
136 records requested by a patient under s. 25, Art. X of the State
137 Constitution may not exceed the amount established under s.
138 456.057(18)~~(16)~~, which may include a reasonable charge for the
139 staff time necessary to prevent the disclosure of the identity
140 of any patient involved in the adverse medical incident through
141 redaction or other means as required by the Health Insurance
142 Portability and Accountability Act of 1996 or its implementing
143 regulations. The health care provider may require payment, in
144 full or in part, before acting on the records request.

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