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588-06059-08

Proposed Committee Substitute by the Committee on Health  
Regulation

1                                   A bill to be entitled  
2           An act relating to prescription drug history; creating s.  
3           893.055, F.S.; providing definitions; requiring the Agency  
4           for Health Care Administration to contract with a vendor  
5           to design and operate a website that gives health care  
6           practitioners, pharmacies, and pharmacists access to  
7           patient medication history through a privacy-protected  
8           website; requiring the contracted vendor to subcontract  
9           with organizations that currently operate electronic  
10          prescribing networks; requiring the contracted vendor to  
11          comply with state and federal privacy laws; requiring the  
12          vendor to create a verification system to check the  
13          validity of licenses for each health care practitioner,  
14          pharmacist, and pharmacy accessing the website;  
15          authorizing a pharmacy or pharmacist to use the website to  
16          obtain only the medication history of patients in  
17          dispensing certain drugs; prohibiting the pharmacist or  
18          pharmacy from accessing pharmacy-identifying information  
19          through the website; prohibiting recovery of damages  
20          against a health care practitioner, pharmacist, or  
21          pharmacy for accessing or failing to access information  
22          from the website; providing for disciplinary action;  
23          providing that a contractor is liable in tort for the  
24          improper release of a patient's confidential information  
25          from the website; providing that sovereign immunity may  
26          not be raised by the contractor or the insurer of that  
27          contractor as a defense in tort regarding the application



478680

588-06059-08

28 of confidential information from the website or for breach  
29 of contract; providing a contingent effective date.  
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31 Be It Enacted by the Legislature of the State of Florida:  
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33 Section 1. Section 893.055, Florida Statutes, is created to  
34 read:

35 893.055 Prescription drug history.--

36 (1) As used in this section, the term:

37 (a) "Agency" means the Agency for Health Care  
38 Administration.

39 (b) "Department" means the Department of Health.

40 (c) "Federal privacy laws" means the provisions relating to  
41 the disclosure of patient privacy information under federal law,  
42 including, but not limited to, the Health Insurance Portability  
43 and Accountability Act of 1996, Pub. L. No. 104-91, and its  
44 implementing regulations, the Federal Privacy Act, 5 U.S.C. s.  
45 552(a), and its implementing regulations, and any other federal  
46 law, including, but not limited to, federal common law and  
47 decisional law that would prohibit the disclosure of patient  
48 privacy information.

49 (d) "Health care practitioner" means, with the exception of  
50 a pharmacist, a practitioner licensed under chapter 456 and  
51 authorized by law to prescribe drugs.

52 (e) "Pharmacy" means a pharmacy subject to licensure or  
53 regulation by the department under chapter 465 which dispenses or  
54 delivers a controlled substance listed in Schedule II, Schedule  
55 III, or Schedule IV to a patient in this state.

56 (2) (a) By June 30, 2009, the agency shall contract with a  
57 vendor to design and operate a secure, privacy-protected website



478680

588-06059-08

58 that provides a health care practitioner, pharmacy, or pharmacist  
59 access to comprehensive patient medication history. In order to  
60 provide comprehensive patient medication history, the agency  
61 shall require the contracted vendor to subcontract with private-  
62 sector organizations that currently operate electronic  
63 prescribing networks that provide such medication history.

64 (b) The contracted vendor shall comply with all applicable  
65 state and federal privacy laws and maintain the website within  
66 the United States.

67 (c) The contracted vendor shall create a system to verify  
68 with the department that each health care practitioner, pharmacy,  
69 or pharmacist requesting access to the website holds a valid,  
70 active license.

71 (3) A health care practitioner authorized to access the  
72 website may use the website only to obtain medication history for  
73 a current patient for prescribing purposes with the written  
74 permission of the patient.

75 (4) A pharmacy or pharmacist authorized to access the  
76 website may use the website only to obtain medication history in  
77 dispensing a current prescription for Schedule II, Schedule III,  
78 or Schedule IV medicinal drugs with the written permission of the  
79 patient. The pharmacy or pharmacist may not have access to  
80 pharmacy-identifying information within a patient's medication  
81 history.

82 (5) A person may not recover damages against a health care  
83 practitioner, pharmacy, or pharmacist authorized to obtain  
84 information under this section for accessing or failing to access  
85 such information.

86 (6) A violation of this section by a health care  
87 practitioner, pharmacy, or pharmacist constitutes grounds for



478680

588-06059-08

88 disciplinary action under each respective licensing chapter and  
89 s. 456.072(1)(k).

90 (7) Any contractor entering into a contract under this  
91 section is liable in tort for the improper release of any  
92 confidential information received, in addition to any breach of  
93 contract liability. Sovereign immunity may not be raised by the  
94 contractor, or the insurer of that contractor on the contractor's  
95 behalf, as a defense in any action arising out of the performance  
96 of any contract entered into under this section, as a defense in  
97 tort, in any other application regarding the maintenance of  
98 confidentiality of information, or for any breach of contract.

99 Section 2. This act shall take effect July 1, 2008, if CS  
100 for SB's 1540 & 2782, or similar legislation, is adopted in the  
101 same legislative session or an extension thereof and becomes law.