

By Senator Saunders

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1 A bill to be entitled
2 An act relating to prescription drug history; repealing s.
3 408.0611, F.S., relating to an electronic drug prescribing
4 clearinghouse; creating s. 893.055, F.S.; providing
5 definitions; requiring the Agency for Health Care
6 Administration to contract with a vendor to design and
7 operate a website that gives health care practitioners,
8 pharmacies, and pharmacists access to patient medication
9 history through a privacy-protected website; requiring the
10 contracted vendor to subcontract with organizations that
11 currently operate electronic prescribing networks;
12 requiring the contracted vendor to comply with state and
13 federal privacy laws; requiring the vendor to create a
14 verification system to check the validity of licenses for
15 each health care practitioner, pharmacist, and pharmacy
16 accessing the website; authorizing a pharmacy or
17 pharmacist to use the website to obtain only the
18 medication history of patients in dispensing certain
19 drugs; prohibiting the pharmacist or pharmacy from
20 accessing pharmacy-identifying information through the
21 website; prohibiting recovery of damages against a health
22 care practitioner, pharmacist, or pharmacy for accessing
23 or failing to access information from the website;
24 providing for disciplinary action; providing that a
25 contractor is liable in tort for the improper release of a
26 patient's confidential information from the website;
27 providing that sovereign immunity may not be raised by the
28 contractor or the insurer of that contractor as a defense
29 in tort regarding the application of confidential

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30 information from the website or for breach of contract;
31 providing a contingent effective date.

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

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35 Section 1. Section 408.0611, Florida Statutes, is repealed.

36 Section 2. Section 893.055, Florida Statutes, is created to
37 read:

38 893.055 Prescription drug history.--

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

40 (a) "Agency" means the Agency for Health Care
41 Administration.

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

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

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

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

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59 (2) (a) By June 30, 2009, the agency shall contract with a
60 vendor to design and operate a secure, privacy-protected website
61 that provides a health care practitioner, pharmacy, or pharmacist
62 access to comprehensive patient medication history. In order to
63 provide comprehensive patient medication history, the agency
64 shall require the contracted vendor to subcontract with private-
65 sector organizations that currently operate electronic
66 prescribing networks that provide such medication history.

67 (b) The contracted vendor shall comply with all applicable
68 state and federal privacy laws and maintain the website within
69 the United States.

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

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

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

85 (5) A person may not recover damages against a health care
86 practitioner, pharmacy, or pharmacist authorized to obtain

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87 information under this section for accessing or failing to access
88 such information.

89 (6) A violation of this section by a health care
90 practitioner, pharmacy, or pharmacist constitutes grounds for
91 disciplinary action under each respective licensing chapter and
92 s. 456.072(1)(k).

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

102 Section 3. This act shall take effect July 1, 2008, if
103 Senate Bill _____, or similar legislation, is adopted in the same
104 legislative session or an extension thereof and becomes law.