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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/1/2008	.	
	.	
	.	

1 The Committee on Health Regulation (Lawson) recommended the
 2 following **amendment**:

3
 4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause
 6 and insert:

7 Section 1. Subsection (4) of section 395.3025, Florida
 8 Statutes, is amended to read:

9 395.3025 Patient and personnel records; copies;
 10 examination.--

11 (4) Patient records are confidential and must not be
 12 disclosed without the consent of the patient or his or her legal
 13 representative ~~person to whom they pertain~~, but appropriate
 14 disclosure may be made without such consent to:

15 (a) Licensed facility personnel, ~~and~~ attending physicians,
 16 or other health care practitioners and providers currently



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17 | involved in the care or treatment of the patient for use only in
18 | connection with the treatment of the patient.

19 | (b) Licensed facility personnel only for administrative
20 | purposes or risk management and quality assurance functions.

21 | (c) The agency, for purposes of health care cost
22 | containment.

23 | (d) In any civil or criminal action, unless otherwise
24 | prohibited by law, upon the issuance of a subpoena from a court
25 | of competent jurisdiction and proper notice by the party seeking
26 | such records to the patient or his or her legal representative.

27 | (e) The department agency upon subpoena issued pursuant to
28 | s. 456.071, but the records obtained thereby must be used solely
29 | for the purpose of the department agency and the appropriate
30 | professional board in its investigation, prosecution, and appeal
31 | of disciplinary proceedings. If the department agency requests
32 | copies of the records, the facility shall charge no more than its
33 | actual copying costs, including reasonable staff time. The
34 | records must be sealed and must not be available to the public
35 | pursuant to s. 119.07(1) or any other statute providing access to
36 | records, nor may they be available to the public as part of the
37 | record of investigation for and prosecution in disciplinary
38 | proceedings made available to the public by the department agency
39 | or the appropriate regulatory board. However, the department
40 | agency must make available, upon written request by a
41 | practitioner against whom probable cause has been found, any such
42 | records that form the basis of the determination of probable
43 | cause.

44 | (f) The department ~~of Health~~ or its agent, for the purpose
45 | of establishing and maintaining a trauma registry and for the
46 | purpose of ensuring that hospitals and trauma centers are in



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47 | compliance with the standards and rules established under ss.
48 | 395.401, 395.4015, 395.4025, 395.404, 395.4045, and 395.405, and
49 | for the purpose of monitoring patient outcome at hospitals and
50 | trauma centers that provide trauma care services.

51 | (g) The Department of Children and Family Services or its
52 | agent, for the purpose of investigations of cases of abuse,
53 | neglect, or exploitation of children or vulnerable adults.

54 | (h) The State Long-Term Care Ombudsman Council and the
55 | local long-term care ombudsman councils, with respect to the
56 | records of a patient who has been admitted from a nursing home or
57 | long-term care facility, when the councils are conducting an
58 | investigation involving the patient as authorized under part II
59 | of chapter 400, upon presentation of identification as a council
60 | member by the person making the request. Disclosure under this
61 | paragraph shall only be made after a competent patient or the
62 | patient's representative has been advised that disclosure may be
63 | made and the patient has not objected.

64 | (i) A local trauma agency or a regional trauma agency that
65 | performs quality assurance activities, or a panel or committee
66 | assembled to assist a local trauma agency or a regional trauma
67 | agency in performing quality assurance activities. Patient
68 | records obtained under this paragraph are confidential and exempt
69 | from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

70 | (j) Organ procurement organizations, tissue banks, and eye
71 | banks required to conduct death records reviews pursuant to s.
72 | 395.2050.

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



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

78 (m) A regional poison control center for purposes of
79 treating a poison episode under evaluation, case management of
80 poison cases, or compliance with data collection and reporting
81 requirements of s. 395.1027 and the professional organization
82 that certifies poison control centers in accordance with federal
83 law.

84 Section 2. Subsection (4) of section 408.05, Florida
85 Statutes, is amended to read:

86 408.05 Florida Center for Health Information and Policy
87 Analysis.--

88 (4) TECHNICAL ASSISTANCE.--

89 (a) The center shall provide technical assistance to
90 persons or organizations engaged in health planning activities in
91 the effective use of statistics collected and compiled by the
92 center. The center shall also provide the following additional
93 technical assistance services:

94 1. Establish procedures identifying the circumstances under
95 which, the places at which, the persons from whom, and the
96 methods by which a person may secure data from the center,
97 including procedures governing requests, the ordering of
98 requests, timeframes for handling requests, and other procedures
99 necessary to facilitate the use of the center's data. To the
100 extent possible, the center should provide current data timely in
101 response to requests from public or private agencies.

102 2. Provide assistance to data sources and users in the
103 areas of database design, survey design, sampling procedures,



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104 statistical interpretation, and data access to promote improved
105 health-care-related data sets.

106 3. Identify health care data gaps and provide technical
107 assistance to other public or private organizations for meeting
108 documented health care data needs.

109 4. Assist other organizations in developing statistical
110 abstracts of their data sets that could be used by the center.

111 5. Provide statistical support to state agencies with
112 regard to the use of databases maintained by the center.

113 6. To the extent possible, respond to multiple requests for
114 information not currently collected by the center or available
115 from other sources by initiating data collection.

116 7. Maintain detailed information on data maintained by
117 other local, state, federal, and private agencies in order to
118 advise those who use the center of potential sources of data
119 which are requested but which are not available from the center.

120 8. Respond to requests for data which are not available in
121 published form by initiating special computer runs on data sets
122 available to the center.

123 9. Monitor innovations in health information technology,
124 informatics, and the exchange of health information and maintain
125 a repository of technical resources to support the development of
126 a statewide health information exchange network.

127 ~~(b) The agency shall administer, manage, and monitor grants~~
128 ~~to not for profit organizations, regional health information~~
129 ~~organizations, public health departments, or state agencies that~~
130 ~~submit proposals for planning, implementation, or training~~
131 ~~projects to advance the development of a health information~~
132 ~~network. Any grant contract shall be evaluated to ensure the~~
133 ~~effective outcome of the health information project.~~



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134 (b)(e) The agency shall initiate, oversee, manage, and
135 evaluate the integration of health care data from each state
136 agency that collects, stores, and reports on health care issues
137 and make that data available to any health care practitioner
138 through a statewide state health information exchange network.

139 Section 3. Section 408.051, Florida Statutes, is created to
140 read:

141 408.051 Florida eHealth Initiative Act.--

142 (1) SHORT TITLE.--This section may be cited as the "Florida
143 eHealth Initiative Act."

144 (2) LEGISLATIVE INTENT.--The Legislature recognizes that
145 the exchange of electronic medical records will benefit consumers
146 by increasing the quality and efficiency of health care
147 throughout the state. It is the intent of the Legislature that
148 the state promote and coordinate the establishment of a secure,
149 privacy-protected, and interconnected statewide health
150 information exchange.

151 (3) DEFINITIONS.--As used in this section, the term:

152 (a) "Electronic medical record" means a record of a
153 person's medical treatment created by a licensed health care
154 provider and stored in an interoperable and accessible digital
155 format.

156 (b) "Electronic medical records system" means an
157 application environment composed of at least two of the following
158 systems: a clinical data repository; clinical decision support;
159 controlled medical vocabulary; computerized provider order entry;
160 pharmacy; or clinical documentation. The application must be used
161 by health care practitioners to document, monitor, and manage
162 health care delivery within a health care delivery system and



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163 must be capable of interoperability within a health information
164 exchange.

165 (c) "Health information exchange" means an electronic
166 system used to acquire, process, and transmit electronic medical
167 records that can be shared in real time among authorized health
168 care providers, health care facilities, health insurers, and
169 other recipients, as authorized by law, to facilitate the
170 provision of health care services.

171 (d) "Health information organization" means an entity that
172 has a formal structure and established policies and procedures
173 and that serves as a neutral convener of local stakeholders to
174 enable the secure and reliable exchange of electronic medical
175 records among authorized health care stakeholders within a
176 defined geographic region to facilitate improvements in health
177 care quality, safety, and coordination of care.

178 (4) MATCHING GRANTS.--

179 (a) Subject to a specific appropriation, the agency shall
180 award and monitor matching grants to health information
181 organizations that submit proposals that advance the development
182 of a statewide health information exchange. Funds awarded under
183 this subsection shall be awarded on the basis of matching each \$1
184 of state funds with \$1 of local or private funds. Local or
185 private funds may be provided in the form of cash or in-kind
186 support or services. Grants may be awarded within the following
187 categories: development, operation, and collaboration.

188 (b) The agency shall, by rule, establish specific
189 eligibility criteria for a health information organization to
190 qualify for a grant under this subsection. These criteria shall
191 include, at a minimum, documentation of the following:



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192 1. For development grants, the proposed organizational
193 structure, the level of community support, including a list of
194 key participants, a demonstration of available local or private
195 matching funds, a timeline for development of the health
196 information exchange, and proposed goals and metrics.

197 2. For operation grants, a demonstration of available local
198 or private matching funds and a detailed business plan, which
199 shall include a timeline for implementation of the health
200 information exchange, policies and procedures to protect the
201 privacy and security of electronic medical records, and proposed
202 goals and metrics.

203 3. For collaboration grants, a demonstration of available
204 local or private matching funds, memoranda of understanding
205 between at least two health information organizations for the
206 exchange of electronic medical records, a demonstration of
207 consistent utilization of the health information exchange by
208 members within each participating health information
209 organization, and a detailed business plan, which shall include a
210 timeline for the implementation of the exchange of electronic
211 medical records between participating health information
212 organizations, policies and procedures to protect the privacy and
213 security of electronic medical records, and proposed goals and
214 metrics.

215 (c) Beginning July 1, 2008, the agency may not award a
216 health information organization more than 6 aggregate years of
217 funding.

218 (d) The agency shall award grants in consultation with the
219 Florida Health Information Exchange Advisory Council.

220 (5) ELECTRONIC MEDICAL RECORDS SYSTEM ADOPTION LOAN
221 PROGRAM.--



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222 (a) Subject to a specific appropriation, the agency shall
223 operate an Electronic Medical Records System Adoption Loan
224 Program for the purpose of providing a one-time, no-interest loan
225 to eligible physicians licensed under chapter 458 or chapter 459,
226 to an eligible business entity whose shareholders are licensed
227 under chapter 458 or chapter 459, or to an eligible faculty
228 practice plan of a state university for the initial costs of
229 implementing an electronic medical records system.

230 (b) In order to be eligible for a loan under this
231 subsection, each physician must demonstrate that he or she has
232 practiced continuously within the state for the previous 3 years
233 or that the faculty practice plan has been established.

234 (c) The agency may not provide a loan to a physician who
235 has or a business entity whose physician shareholder has:

236 1. Been found guilty of violating s. 456.072(1) or been
237 disciplined under the applicable licensing chapter in the
238 previous 5 years.

239 2. Been found guilty of or entered a plea of guilty or nolo
240 contendere to a violation of s. 409.920 or s. 409.9201.

241 3. Been sanctioned pursuant to s. 409.913 for fraud or
242 abuse.

243 (d) A loan may be provided to an eligible physician,
244 business entity, or faculty practice plan in a lump-sum amount to
245 pay for the costs of purchasing hardware and software,
246 subscription services, professional consultation, and staff
247 training. The agency shall provide guidance to loan recipients by
248 providing, at a minimum, a list of electronic medical record
249 systems recognized or certified by national standards-setting
250 entities as capable of being used to communicate with a health
251 information exchange.



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252 (e) The agency shall distribute a minimum of 25 percent of
253 funds appropriated to this program to physicians or business
254 entities operating within a rural county as defined in s.
255 288.106(1)(r).

256 (f) The agency shall, by rule, develop standard terms and
257 conditions for use in this program. At a minimum, these terms and
258 conditions shall require:

259 1. Loan repayment by the physician, business entity, or
260 faculty practice plan within a reasonable period of time, which
261 may not be longer than 72 months after the funding of the loan.

262 2. Equal periodic payments that commence within 3 months
263 after the funding of the loan.

264 3. The eligible physician, business entity, or faculty
265 practice plan to execute a promissory note and a security
266 agreement in favor of the state. The security agreement shall be
267 a purchase-money security interest pledging as collateral for the
268 loan the specific hardware and software purchased with the loan
269 proceeds. The agency shall prepare and record a financing
270 statement under chapter 679. The physician or business entity
271 shall pay the cost of recording the financing statement. The
272 security agreement shall further require that the physician or
273 business entity pay all collection costs, including attorney's
274 fees.

275 (g) The agency shall require the physician or business
276 entity to provide additional security under one of the following
277 subparagraphs:

278 1. An irrevocable letter of credit, as defined in chapter
279 675, in an amount equal to the amount of the loan.

280 2. An escrow account consisting of cash or assets eligible
281 for deposit in accordance with s. 625.52 in an amount equal to



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282 the amount of the loan. If the escrow agent is responsible for
283 making the periodic payments on the loan, the required escrow
284 balance may be diminished as payments are made.

285 3. A pledge of the accounts receivables of the physician or
286 business entity. This pledge shall be reflected on the financing
287 statement.

288 (h) All payments received from or on behalf of a physician
289 or business entity under this program shall be deposited into the
290 agency's Administrative Trust Fund to be used to fund new loans.

291 (i) If a physician, business entity, or university whose
292 faculty practice plan has received a loan under this section
293 ceases to provide care or services to patients, or if the
294 physician, business entity, or faculty practice plan defaults in
295 any payment and the default continues for 30 days, the entire
296 loan balance shall be immediately due and payable and shall bear
297 interest from that point forward at the rate of 18 percent
298 annually. Upon default, the agency may offset any moneys owed to
299 the physician, business entity, or faculty practice plan from the
300 state and apply the offset against the outstanding balance.

301 (j) If a physician defaults in any payment and if the
302 default continues for 30 days, the default constitutes grounds
303 for disciplinary action under chapter 458 or chapter 459 and s.
304 456.072(1)(k).

305 (6) FLORIDA HEALTH INFORMATION EXCHANGE ADVISORY COUNCIL.--

306 (a) The Florida Health Information Exchange Advisory
307 Council is created as an adjunct to the agency. The council is
308 subject to the requirements of s. 20.052, except that only state
309 officers and employees shall be reimbursed for per diem and
310 travel expenses pursuant to s. 112.061.

311 (b) The purpose of the council is to:



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312 1. Promote participation in regional and statewide health
313 information exchanges and adoption of health information
314 technology to support the infrastructure capacity for regional
315 and statewide health information exchanges.

316 2. Conduct outreach and convene forums to educate
317 stakeholders regarding the benefits of using a health information
318 exchange.

319 3. Provide guidance to stakeholders regarding the effective
320 use of health information exchanges and standards for protecting
321 the privacy and security of electronic medical records.

322 (c) The council shall consist of the following members:

323 1. The Secretary of Health Care Administration, or his or
324 her designee.

325 2. The State Surgeon General, or his or her designee.

326 3. Two members appointed by and serving at the pleasure of
327 the Governor, of which:

328 a. One member must be from the health insurance industry.

329 b. One member must be a consumer who is a resident of the
330 state.

331 4. Four members appointed by and serving at the pleasure of
332 the President of the Senate, of which:

333 a. One member must be from a hospital using an electronic
334 medical records system.

335 b. One member must be a physician using an electronic
336 medical records system in his or her practice.

337 c. One member must be a representative of an operating
338 health information organization in the state.

339 d. One member must be from a federally qualified health
340 center or other rural health organization utilizing an electronic
341 medical records system.



342 5. Four members appointed by and serving at the pleasure of
343 the Speaker of the House of Representatives, of which:

344 a. One member must be from a hospital using an electronic
345 medical records system.

346 b. One member must be a physician using an electronic
347 medical records system in his or her practice.

348 c. One member must be a representative of an operating
349 health information organization in the state.

350 d. One member must be from a federally qualified health
351 center or other rural health organization utilizing an electronic
352 medical records system.

353 (d) A member who is a representative of an operating health
354 information organization in the state must recuse himself or
355 herself during discussion, evaluation, or recommendation of a
356 grant application.

357 (e) Each member of the council subject to appointment shall
358 be appointed to a term of 4 years following the date of
359 appointment. A vacancy shall be filled by appointment for the
360 remainder of the term. Appointments shall be made within 45 days
361 after the effective date of this section.

362 (f) The council may meet at the call of the chair or at the
363 request of a majority of its membership, but the council must
364 meet at least quarterly. Meetings of the council may be held via
365 teleconference or other electronic means.

366 (g) Members shall elect a chair and vice chair annually.

367 (h) A majority of the members constitutes a quorum and the
368 affirmative vote of a majority of a quorum is necessary to take
369 action.

370 (i) The council's duties and responsibilities include, but
371 are not limited to, developing recommendations to:



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372 1. Establish standards for all state-funded health
373 information exchange efforts. Such standards shall include, but
374 are not limited to, policies and procedures to protect the
375 privacy and security of electronic medical records.

376 2. Remove barriers, including, but not limited to,
377 technological, regulatory, and financial barriers, which limit
378 participation by health care providers, health care facilities,
379 and health insurers in a health information exchange.

380 3. Remove barriers that prevent consumers from having
381 access to their electronic medical records.

382 4. Provide incentives to promote participation by health
383 care providers, health care facilities, and health insurers in
384 health information exchanges.

385 5. Identify health care data held by state agencies and
386 remove barriers to making that data available to authorized
387 recipients through health information exchanges in a private and
388 secure manner.

389 6. Increase state agency participation in health
390 information exchanges.

391 7. Enter into partnerships with other state, regional, and
392 federal entities to promote and coordinate health information
393 exchange efforts.

394 8. Create a long-term plan for an interoperable statewide
395 network of health information organizations.

396 9. Consult with experts regarding the use of health
397 information in medical research to ensure that all
398 recommendations take into account the legitimate uses of health
399 care information for biomedical research, drug development,
400 clinical trials, post-approval surveillance, and public health
401 and public agency reporting requirements.

Bill No. SB 1998



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402
403 The council shall establish ad hoc issue-oriented technical
404 workgroups on an as-needed basis to make recommendations to the
405 council.

406 (j) The Florida Center for Health Information and Policy
407 Analysis within the agency shall provide, within existing
408 resources, staff support to enable the council to carry out its
409 responsibilities under this section.

410 (k) Beginning July 1, 2009, the council shall annually
411 provide a report to the Governor, the President of the Senate,
412 the Speaker of the House of Representatives, and the chairs of
413 the appropriate substantive committees of the Senate and the
414 House of Representatives which includes, but is not limited to,
415 the recommendations regarding the council's duties and
416 responsibilities. In addition, by July 1, 2010, the council shall
417 recommend a long-term plan to create an interoperable statewide
418 network of health information organizations to the Governor, the
419 President of the Senate, the Speaker of the House of
420 Representatives, and the chairs of the appropriate substantive
421 committees of the Senate and the House of Representatives.

422 (l) This section is repealed and the council shall stand
423 abolished July 1, 2012, unless reviewed and saved from repeal
424 through reenactment by the Legislature.

425 (7) AGENCY FOR HEALTH CARE ADMINISTRATION; DUTIES.--

426 (a) The agency shall develop and maintain on its Internet
427 website the following information:

428 1. Federal and private-sector health information exchange
429 funding programs, including analyses of successful local and
430 state recipients of the programs, as well as unsuccessful local
431 and state applicants of the programs.



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432 2. A clearinghouse of state and national legislative,
433 regulatory, and public awareness activities related to health
434 information exchanges.

435 (b) The agency shall develop and implement a plan that
436 promotes, at a minimum, participation in regional and statewide
437 health information exchanges and the adoption of electronic
438 medical record systems by physicians through the Electronic
439 Medical Records System Adoption Loan Program, in consultation
440 with the Florida Health Information Exchange Advisory Council,
441 organizations representing allopathic and osteopathic practicing
442 physicians, the Board of Medicine, and the Board of Osteopathic
443 Medicine.

444 (8) PROGRAM EVALUATION; REPORT.--The Office of Program
445 Policy Analysis and Government Accountability shall complete an
446 independent evaluation of the grants program administered by the
447 agency. The evaluation must include, at a minimum, assessments of
448 the grant evaluation and distribution process; the way in which
449 grant dollars are spent; the level of participation by entities
450 within each grantee's project; the extent of clinical data
451 exchange among entities within each grantee's project; the
452 sources of funding for each grantee; and the feasibility of each
453 grantee achieving long-term sustainability without state grant
454 funding. The evaluation must assess the level at which the
455 current grants program is advancing the development of a
456 statewide health information exchange and recommend other
457 programs that may accomplish the same goal. The report shall be
458 submitted to the Governor, the President of the Senate, the
459 Speaker of the House of Representatives, and the chairs of the
460 relevant committees in the Senate and the House of
461 Representatives no later than July 1, 2009.

Bill No. SB 1998



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462 Section 4. Subsection (5) of section 408.062, Florida
463 Statutes, is amended to read:

464 408.062 Research, analyses, studies, and reports.--

465 ~~(5) The agency shall develop and implement a strategy for~~
466 ~~the adoption and use of electronic health records, including the~~
467 ~~development of an electronic health information network for the~~
468 ~~sharing of electronic health records among health care~~
469 ~~facilities, health care providers, and health insurers. The~~
470 ~~agency may develop rules to facilitate the functionality and~~
471 ~~protect the confidentiality of electronic health records. The~~
472 ~~agency shall report to the Governor, the Speaker of the House of~~
473 ~~Representatives, and the President of the Senate on legislative~~
474 ~~recommendations to protect the confidentiality of electronic~~
475 ~~health records.~~

476 Section 5. Subsection (2) of section 483.181, Florida
477 Statutes, is amended to read:

478 483.181 Acceptance, collection, identification, and
479 examination of specimens.--

480 (2) The results of a test must be reported directly to the
481 licensed practitioner or other authorized person who requested it
482 and appropriate disclosure may be made by the clinical laboratory
483 without a patient's consent to other health care practitioners
484 and providers involved in the care or treatment of the patient
485 for use in connection with the treatment of the patient. The
486 report must include the name and address of the clinical
487 laboratory in which the test was actually performed, unless the
488 test was performed in a hospital laboratory and the report
489 becomes an integral part of the hospital record.

490 Section 6. This act shall take effect upon becoming a law.
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492 | ===== T I T L E A M E N D M E N T =====

493 | And the title is amended as follows:

494 | Delete everything before the enacting clause
495 | and insert:

496 | A bill to be entitled

497 | An act relating to electronic health records; amending s.
498 | 395.3025, F.S.; expanding access to a patient's medical
499 | records to facilitate electronic exchange of data between
500 | certain health care facilities, practitioners, and
501 | providers and attending physicians; revising provisions
502 | relating to the disclosure of patient records to conform
503 | to changes made by the act; amending s. 408.05, F.S.;
504 | removing responsibility of the Agency for Health Care
505 | Administration for monitoring certain grants; creating s.
506 | 408.051, F.S.; creating the "Florida eHealth Initiative
507 | Act"; providing legislative intent; providing definitions;
508 | requiring the agency to award and monitor grants to
509 | certain health information organizations; providing
510 | rulemaking authority regarding establishment of
511 | eligibility criteria; establishing the Electronic Medical
512 | Records System Adoption Loan Program; providing
513 | eligibility criteria; providing rulemaking authority
514 | regarding terms and conditions for the granting of loans;
515 | creating the Florida Health Information Exchange Advisory
516 | Council; providing for purpose, membership, terms of
517 | office, and duties of the council; requiring the Florida
518 | Center for Health Information and Policy Analysis to
519 | provide staff support; requiring reports to the Governor
520 | and Legislature; providing for future repeal of s.
521 | 408.051, F.S., and abolition of the council; providing



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522 | duties of the agency with regard to availability of
523 | specified information on the agency's Internet website;
524 | requiring the agency to develop and implement a plan to
525 | promote participation in regional and statewide health
526 | information exchanges; requiring the Office of Program
527 | Policy Analysis and Government Accountability to complete
528 | an independent evaluation of the grants program
529 | administered by the agency and submit the report to the
530 | Governor and Legislature by a certain date; amending s.
531 | 408.062, F.S.; removing responsibility of the agency for
532 | developing an electronic health information network;
533 | amending s. 483.181, F.S.; expanding access to laboratory
534 | reports to facilitate electronic exchange of data between
535 | certain health care practitioners and providers; providing
536 | an effective date.