

By Senator Ring

32-03301-08

20081998__

1 A bill to be entitled
2 An act relating to electronic health records; amending s.
3 395.3025, F.S.; expanding access to a patient's medical
4 records to facilitate electronic exchange of data between
5 certain health care facilities, practitioners, and
6 providers and attending physicians; revising terminology
7 regarding disclosure of patient records to conform to
8 changes made by the act; amending s. 408.05, F.S.;
9 removing responsibility of the Agency for Health Care
10 Administration for monitoring certain grants and health
11 care data; creating s. 408.051, F.S.; creating the
12 "Florida eHealth Initiative Act"; providing legislative
13 intent; providing definitions; requiring the agency to
14 award and monitor grants to certain health information
15 organizations; providing rulemaking authority regarding
16 establishment of eligibility criteria; establishing the
17 Electronic Medical Records System Adoption Loan Program;
18 providing eligibility criteria; providing rulemaking
19 authority regarding terms and conditions for the granting
20 of loans; creating the Florida Health Information Exchange
21 Advisory Council; providing for purpose, membership, terms
22 of office, and duties of the council; requiring the
23 Florida Center for Health Information and Policy Analysis
24 to provide staff support; requiring reports to the
25 Governor and Legislature; providing for future repeal of
26 s. 408.051, F.S., and abolition of the council; providing
27 duties of the agency with regard to availability of
28 specified information on the agency's Internet website;
29 requiring the agency to develop and implement a plan to

32-03301-08

20081998__

30 promote participation in regional and statewide health
31 information exchanges; requiring the Office of Program
32 Policy Analysis and Government Accountability to complete
33 an independent evaluation of the grants program
34 administered by the agency and submit the report to the
35 Governor and Legislature; amending s. 408.062, F.S.;
36 removing responsibility of the agency for developing an
37 electronic health information network; amending s.
38 483.181, F.S.; expanding access to laboratory reports to
39 facilitate electronic exchange of data between certain
40 health care practitioners and providers; providing an
41 effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Paragraphs (a), (e), and (f) of subsection (4)
46 of section 395.3025, Florida Statutes, are amended to read:

47 395.3025 Patient and personnel records; copies;
48 examination.--

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

53 (a) Licensed facility personnel, ~~and~~ attending physicians,
54 or other health care practitioners and providers involved in the
55 care or treatment of the patient for use in connection with the
56 treatment of the patient.

57 (e) The department ~~agency~~ upon subpoena issued pursuant to
58 s. 456.071, but the records obtained thereby must be used solely

32-03301-08

20081998__

59 | for the purpose of the department ~~agency~~ and the appropriate
60 | professional board in its investigation, prosecution, and appeal
61 | of disciplinary proceedings. If the department ~~agency~~ requests
62 | copies of the records, the facility shall charge no more than its
63 | actual copying costs, including reasonable staff time. The
64 | records must be sealed and must not be available to the public
65 | pursuant to s. 119.07(1) or any other statute providing access to
66 | records, nor may they be available to the public as part of the
67 | record of investigation for and prosecution in disciplinary
68 | proceedings made available to the public by the department ~~agency~~
69 | or the appropriate regulatory board. However, the department
70 | ~~agency~~ must make available, upon written request by a
71 | practitioner against whom probable cause has been found, any such
72 | records that form the basis of the determination of probable
73 | cause.

74 | (f) The department ~~of Health~~ or its agent, for the purpose
75 | of establishing and maintaining a trauma registry and for the
76 | purpose of ensuring that hospitals and trauma centers are in
77 | compliance with the standards and rules established under ss.
78 | 395.401, 395.4015, 395.4025, 395.404, 395.4045, and 395.405, and
79 | for the purpose of monitoring patient outcome at hospitals and
80 | trauma centers that provide trauma care services.

81 | Section 2. Subsection (4) of section 408.05, Florida
82 | Statutes, is amended to read:

83 | 408.05 Florida Center for Health Information and Policy
84 | Analysis.--

85 | (4) TECHNICAL ASSISTANCE.--

86 | ~~(a)~~ The center shall provide technical assistance to
87 | persons or organizations engaged in health planning activities in

32-03301-08

20081998__

88 the effective use of statistics collected and compiled by the
89 center. The center shall also provide the following additional
90 technical assistance services:

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

99 (b)~~2.~~ Provide assistance to data sources and users in the
100 areas of database design, survey design, sampling procedures,
101 statistical interpretation, and data access to promote improved
102 health-care-related data sets.

103 (c)~~3.~~ Identify health care data gaps and provide technical
104 assistance to other public or private organizations for meeting
105 documented health care data needs.

106 (d)~~4.~~ Assist other organizations in developing statistical
107 abstracts of their data sets that could be used by the center.

108 (e)~~5.~~ Provide statistical support to state agencies with
109 regard to the use of databases maintained by the center.

110 (f)~~6.~~ To the extent possible, respond to multiple requests
111 for information not currently collected by the center or
112 available from other sources by initiating data collection.

113 (g)~~7.~~ Maintain detailed information on data maintained by
114 other local, state, federal, and private agencies in order to
115 advise those who use the center of potential sources of data
116 which are requested but which are not available from the center.

32-03301-08

20081998__

117 ~~(h)8.~~ Respond to requests for data which are not available
118 in published form by initiating special computer runs on data
119 sets available to the center.

120 ~~(i)9.~~ Monitor innovations in health information technology,
121 informatics, and the exchange of health information and maintain
122 a repository of technical resources to support the development of
123 a health information exchange network.

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

131 ~~(c) The agency shall initiate, oversee, manage, and~~
132 ~~evaluate the integration of health care data from each state~~
133 ~~agency that collects, stores, and reports on health care issues~~
134 ~~and make that data available to any health care practitioner~~
135 ~~through a state health information network.~~

136 Section 3. Section 408.051, Florida Statutes, is created to
137 read:

138 408.051 Florida eHealth Initiative Act.--

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

141 (2) LEGISLATIVE INTENT.--The Legislature recognizes that
142 the exchange of electronic medical records will benefit consumers
143 by increasing the quality and efficiency of health care
144 throughout the state. It is the intent of the Legislature that
145 the state promote and coordinate the establishment of a secure,

32-03301-08

20081998__

146 privacy-protected, and interconnected statewide health
147 information exchange.

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

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

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

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

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

174 (4) MATCHING GRANTS.--

32-03301-08

20081998__

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

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

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

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

199 3. For collaboration grants, a demonstration of available
200 local or private matching funds, memoranda of understanding
201 between at least two health information organizations for the
202 exchange of electronic medical records, a demonstration of
203 consistent utilization of the health information exchange by

32-03301-08

20081998__

204 members within each participating health information
205 organization, and a detailed business plan, which shall include a
206 timeline for the implementation of the exchange of electronic
207 medical records between participating health information
208 organizations, policies and procedures to protect the privacy and
209 security of electronic medical records, and proposed goals and
210 metrics.

211 (c) Beginning July 1, 2008, the agency shall not award a
212 health information organization more than 2 years of funding
213 within each grant category.

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

216 (5) ELECTRONIC MEDICAL RECORDS SYSTEM ADOPTION LOAN
217 PROGRAM.--

218 (a) There is created an Electronic Medical Records System
219 Adoption Loan Program within the agency for the purpose of
220 providing a one-time, no-interest loan to eligible physicians
221 licensed under chapter 458 or chapter 459 or to an eligible
222 business entity whose shareholders are licensed under chapter 458
223 or chapter 459 for the initial costs of implementing an
224 electronic medical records system.

225 (b) In order to be eligible for a loan under this
226 subsection, each physician must demonstrate that he or she has
227 practiced continuously within the state for the previous 3 years.

228 (c) The agency shall not provide a loan to a physician who
229 has or a business entity whose physician has:

230 1. Been found guilty of violating s. 456.072(1) or been
231 disciplined under the applicable licensing chapter in the
232 previous 5 years.

32-03301-08

20081998__

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

235 3. Been sanctioned pursuant to s. 409.913 for fraud or
236 abuse.

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

245 (e) The agency shall distribute a minimum of 25 percent of
246 funds appropriated to this program to physicians or business
247 entities operating within a rural county as defined in s.
248 288.106(1)(r).

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

252 1. Loan repayment by the physician or business entity
253 within a reasonable period of time, which may not be longer than
254 72 months after the funding of the loan.

255 2. Equal periodic payments that commence within 3 months
256 after the funding of the loan.

257 3. The eligible physician or business entity to execute a
258 promissory note and a security agreement in favor of the state.
259 The security agreement shall be a purchase-money security
260 interest pledging as collateral for the loan the specific
261 hardware and software purchased with the loan proceeds. The

32-03301-08

20081998__

262 agency shall prepare and record a financing statement under
263 chapter 679. The physician or business entity shall be
264 responsible for paying the cost of recording the financing
265 statement. The security agreement shall further require that the
266 physician or business entity pay all collection costs, including
267 attorney's fees.

268 (g) The agency shall further require the physician or
269 business entity to provide additional security under one of the
270 following subparagraphs:

271 1. An irrevocable letter of credit, as defined in chapter
272 675, in an amount equal to the amount of the loan.

273 2. An escrow account consisting of cash or assets eligible
274 for deposit in accordance with s. 625.52 in an amount equal to
275 the amount of the loan. If the escrow agent is responsible for
276 making the periodic payments on the loan, the required escrow
277 balance may be diminished as payments are made.

278 3. A pledge of the accounts receivables of the physician or
279 business entity. This pledge shall be reflected on the financing
280 statement.

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

284 (i) If a physician or business entity that has received a
285 loan under this section ceases to provide care or services to
286 patients, or if the physician or business entity defaults in any
287 payment and the default continues for 30 days, the entire loan
288 balance shall be immediately due and payable and shall bear
289 interest from that point forward at the rate of 18 percent
290 annually. Upon default, the agency may offset any moneys owed to

32-03301-08

20081998__

291 the physician or business entity from the state and apply the
292 offset against the outstanding balance.

293 (j) If a physician defaults in any payment and if the
294 default continues for 30 days, the default shall constitute
295 grounds for disciplinary action under chapter 458 or chapter 459
296 and s. 456.072(1)(k).

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

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

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

304 1. Promote participation in regional and statewide health
305 information exchanges and adoption of health information
306 technology to support the infrastructure capacity for regional
307 and statewide health information exchanges.

308 2. Conduct outreach and convene forums to educate
309 stakeholders regarding the benefits of utilizing a health
310 information exchange.

311 3. Provide guidance to stakeholders regarding the effective
312 use of health information exchanges and standards for protecting
313 the privacy and security of electronic medical records.

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

315 1. The Secretary of Health Care Administration, or his or
316 her designee.

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

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

32-03301-08

20081998__

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

321 b. One member must be a consumer who is a resident of the
322 state.

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

325 a. One member must be from a public hospital utilizing an
326 electronic medical records system.

327 b. One member must be a physician utilizing an electronic
328 medical records system in his or her practice.

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

331 d. One member must be from a federally qualified health
332 center or other rural health organization utilizing an electronic
333 medical records system.

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

336 a. One member must be from a public hospital utilizing an
337 electronic medical records system.

338 b. One member must be a physician utilizing an electronic
339 medical records system in his or her practice.

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

342 d. One member must be from a federally qualified health
343 center or other rural health organization utilizing an electronic
344 medical records system.

345 (d) A member who is a representative of an operating health
346 information organization in the state must recuse himself or
347 herself during discussion, evaluation, or recommendation of a
348 grant application.

32-03301-08

20081998__

349 (e) Each member of the council subject to appointment shall
350 be appointed to serve for a term of 4 years following the date of
351 appointment. A vacancy shall be filled by appointment for the
352 remainder of the term. Appointments shall be made within 45 days
353 after the effective date of this section.

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

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

359 (h) A majority of the members constitutes a quorum and the
360 affirmative vote of a majority of a quorum is necessary to take
361 action.

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

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

368 2. Remove barriers, including, but not limited to,
369 technological, regulatory, and financial barriers, that limit
370 participation by health care providers, health care facilities,
371 and health insurers in a health information exchange.

372 3. Remove barriers that prevent consumers from having
373 access to their electronic medical records.

374 4. Provide incentives to promote participation by health
375 care providers, health care facilities, and health insurers in
376 health information exchanges.

32-03301-08

20081998__

377 5. Identify health care data held by state agencies and
378 remove barriers to making that data available to authorized
379 recipients through health information exchanges in a private and
380 secure manner.

381 6. Increase state agency participation in health
382 information exchanges.

383 7. Partner with other state, regional, and federal entities
384 to promote and coordinate health information exchange efforts.

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

387
388 The council shall establish ad hoc issue-oriented technical
389 workgroups on an as-needed basis to make recommendations to the
390 council.

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

395 (k) Beginning July 1, 2009, the council shall annually
396 provide a report to the Governor, the President of the Senate,
397 the Speaker of the House of Representatives, and the chairs of
398 the appropriate substantive committees of the Senate and the
399 House of Representatives that includes, but is not limited to,
400 the recommendations regarding the council's duties and
401 responsibilities. In addition, by July 1, 2012, the council shall
402 recommend a long-term plan to create an interoperable statewide
403 network of health information organizations to the Governor, the
404 President of the Senate, the Speaker of the House of

32-03301-08

20081998__

405 Representatives, and the chairs of the appropriate substantive
406 committees of the Senate and the House of Representatives.

407 (1) This section is repealed and the council shall stand
408 abolished July 1, 2012, unless reviewed and saved from repeal
409 through reenactment by the Legislature.

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

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

413 1. Federal and private sector health information exchange
414 funding programs, including analyses of successful local and
415 state recipients of the programs, as well as unsuccessful local
416 and state applicants of the programs.

417 2. A clearinghouse of state and national legislative,
418 regulatory, and public awareness activities related to health
419 information exchanges.

420 (b) The agency shall develop and implement a plan that
421 promotes, at a minimum, participation in regional and statewide
422 health information exchanges and the adoption of electronic
423 medical record systems by physicians through the Electronic
424 Medical Records System Adoption Loan Program, in consultation
425 with the Florida Health Information Exchange Advisory Council,
426 organizations representing allopathic and osteopathic practicing
427 physicians, the Board of Medicine, and the Board of Osteopathic
428 Medicine.

429 (8) PROGRAM EVALUATION; REPORT.--The Office of Program
430 Policy Analysis and Government Accountability shall complete an
431 independent evaluation of the grants program administered by the
432 agency. The evaluation must include, at a minimum, assessments of
433 the grant evaluation and distribution process; the way in which

32-03301-08

20081998__

434 grant dollars are spent; the level of participation by entities
435 within each grantee's project; the extent of clinical data
436 exchange among entities within each grantee's project; the
437 sources of funding for each grantee; and the feasibility of each
438 grantee achieving long-term sustainability without state grant
439 funding. The evaluation must assess the level at which the
440 current grants program is advancing the development of a
441 statewide health information exchange and recommend other
442 programs that may accomplish the same goal. The report shall be
443 submitted to the Governor, the President of the Senate, the
444 Speaker of the House of Representatives, and the chairs of the
445 relevant committees in the Senate and the House of
446 Representatives no later than July 1, 2009.

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

449 408.062 Research, analyses, studies, and reports.--

450 ~~(5) The agency shall develop and implement a strategy for~~
451 ~~the adoption and use of electronic health records, including the~~
452 ~~development of an electronic health information network for the~~
453 ~~sharing of electronic health records among health care~~
454 ~~facilities, health care providers, and health insurers. The~~
455 ~~agency may develop rules to facilitate the functionality and~~
456 ~~protect the confidentiality of electronic health records. The~~
457 ~~agency shall report to the Governor, the Speaker of the House of~~
458 ~~Representatives, and the President of the Senate on legislative~~
459 ~~recommendations to protect the confidentiality of electronic~~
460 ~~health records.~~

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

32-03301-08

20081998__

463 483.181 Acceptance, collection, identification, and
464 examination of specimens.--

465 (2) The results of a test must be reported directly to the
466 licensed practitioner or other authorized person who requested
467 it, and appropriate disclosure may be made by the clinical
468 laboratory without a patient's consent to other health care
469 practitioners and providers involved in the care or treatment of
470 the patient for use in connection with the treatment of the
471 patient. The report must include the name and address of the
472 clinical laboratory in which the test was actually performed,
473 unless the test was performed in a hospital laboratory and the
474 report becomes an integral part of the hospital record.

475 Section 6. This act shall take effect upon becoming a law.