

By the Committees on Governmental Operations; Health Regulation;
and Senator Ring

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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 provisions
7 relating to the disclosure of patient records to conform
8 to changes made by the act; authorizing a health
9 information exchange to receive patient medical records
10 without patient consent for processing and transmission of
11 electronic medical records; amending s. 408.05, F.S.;
12 removing the responsibility of the Agency for Health Care
13 Administration for monitoring certain grants; creating s.
14 408.051, F.S.; creating the "Florida eHealth Initiative
15 Act"; providing legislative intent; providing definitions;
16 requiring the agency to award and monitor grants to
17 certain health information organizations; providing
18 rulemaking authority regarding establishment of
19 eligibility criteria; establishing the Electronic Medical
20 Records System Adoption Loan Program; providing
21 eligibility criteria; providing rulemaking authority
22 regarding terms and conditions for the granting of loans;
23 creating the Florida Health Information Exchange Advisory
24 Council; providing for purpose, membership, terms of
25 office, and duties of the council; requiring the Florida
26 Center for Health Information and Policy Analysis to
27 provide staff support; requiring reports to the Governor
28 and Legislature; providing for future repeal of s.
29 408.051, F.S., and abolition of the council; providing

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

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Subsection (4) of section 395.3025, Florida
49 Statutes, is amended to read:

50 395.3025 Patient and personnel records; copies;
51 examination.--

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

56 (a) Licensed facility personnel, ~~and~~ attending physicians,
57 or other health care practitioners and providers currently
58 involved in the care or treatment of the patient for use only in

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59 | connection with the treatment of the patient.

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

62 | (c) The agency, for purposes of health care cost
63 | containment.

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

68 | (e) The department ~~agency~~ upon subpoena issued pursuant to
69 | s. 456.071, but the records obtained thereby must be used solely
70 | for the purpose of the department ~~agency~~ and the appropriate
71 | professional board in its investigation, prosecution, and appeal
72 | of disciplinary proceedings. If the department ~~agency~~ requests
73 | copies of the records, the facility shall charge no more than its
74 | actual copying costs, including reasonable staff time. The
75 | records must be sealed and must not be available to the public
76 | pursuant to s. 119.07(1) or any other statute providing access to
77 | records, nor may they be available to the public as part of the
78 | record of investigation for and prosecution in disciplinary
79 | proceedings made available to the public by the department ~~agency~~
80 | or the appropriate regulatory board. However, the department
81 | ~~agency~~ must make available, upon written request by a
82 | practitioner against whom probable cause has been found, any such
83 | records that form the basis of the determination of probable
84 | cause.

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

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88 compliance with the standards and rules established under ss.
89 395.401, 395.4015, 395.4025, 395.404, 395.4045, and 395.405, and
90 for the purpose of monitoring patient outcome at hospitals and
91 trauma centers that provide trauma care services.

92 (g) The Department of Children and Family Services or its
93 agent, for the purpose of investigations of cases of abuse,
94 neglect, or exploitation of children or vulnerable adults.

95 (h) The State Long-Term Care Ombudsman Council and the
96 local long-term care ombudsman councils, with respect to the
97 records of a patient who has been admitted from a nursing home or
98 long-term care facility, when the councils are conducting an
99 investigation involving the patient as authorized under part II
100 of chapter 400, upon presentation of identification as a council
101 member by the person making the request. Disclosure under this
102 paragraph shall only be made after a competent patient or the
103 patient's representative has been advised that disclosure may be
104 made and the patient has not objected.

105 (i) A local trauma agency or a regional trauma agency that
106 performs quality assurance activities, or a panel or committee
107 assembled to assist a local trauma agency or a regional trauma
108 agency in performing quality assurance activities. Patient
109 records obtained under this paragraph are confidential and exempt
110 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

111 (j) Organ procurement organizations, tissue banks, and eye
112 banks required to conduct death records reviews pursuant to s.
113 395.2050.

114 (k) The Medicaid Fraud Control Unit in the Department of
115 Legal Affairs pursuant to s. 409.920.

116 (l) The Department of Financial Services, or an agent,

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117 employee, or independent contractor of the department who is
118 auditing for unclaimed property pursuant to chapter 717.

119 (m) A regional poison control center for purposes of
120 treating a poison episode under evaluation, case management of
121 poison cases, or compliance with data collection and reporting
122 requirements of s. 395.1027 and the professional organization
123 that certifies poison control centers in accordance with federal
124 law.

125 (n) A health information exchange for the sole purpose of
126 processing and transmitting electronic medical records among
127 persons or entities authorized to have access to those records
128 for purposes of medical treatment only and not for sale or
129 brokering for marketing purposes.

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

132 408.05 Florida Center for Health Information and Policy
133 Analysis.--

134 (4) TECHNICAL ASSISTANCE.--

135 (a) The center shall provide technical assistance to
136 persons or organizations engaged in health planning activities in
137 the effective use of statistics collected and compiled by the
138 center. The center shall also provide the following additional
139 technical assistance services:

140 1. Establish procedures identifying the circumstances under
141 which, the places at which, the persons from whom, and the
142 methods by which a person may secure data from the center,
143 including procedures governing requests, the ordering of
144 requests, timeframes for handling requests, and other procedures
145 necessary to facilitate the use of the center's data. To the

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146 extent possible, the center should provide current data timely in
147 response to requests from public or private agencies.

148 2. Provide assistance to data sources and users in the
149 areas of database design, survey design, sampling procedures,
150 statistical interpretation, and data access to promote improved
151 health-care-related data sets.

152 3. Identify health care data gaps and provide technical
153 assistance to other public or private organizations for meeting
154 documented health care data needs.

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

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

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

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

166 8. Respond to requests for data which are not available in
167 published form by initiating special computer runs on data sets
168 available to the center.

169 9. Monitor innovations in health information technology,
170 informatics, and the exchange of health information and maintain
171 a repository of technical resources to support the development of
172 a statewide health information exchange network.

173 ~~(b) The agency shall administer, manage, and monitor grants~~
174 ~~to not-for-profit organizations, regional health information~~

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175 ~~organizations, public health departments, or state agencies that~~
176 ~~submit proposals for planning, implementation, or training~~
177 ~~projects to advance the development of a health information~~
178 ~~network. Any grant contract shall be evaluated to ensure the~~
179 ~~effective outcome of the health information project.~~

180 (b)(c) The agency shall initiate, oversee, manage, and
181 evaluate the integration of health care data from each state
182 agency that collects, stores, and reports on health care issues
183 and make that data available to any health care practitioner
184 through a statewide state health information exchange network.

185 Section 3. Section 408.051, Florida Statutes, is created to
186 read:

187 408.051 Florida eHealth Initiative Act.--

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

190 (2) LEGISLATIVE INTENT.--The Legislature recognizes that
191 the exchange of electronic medical records will benefit consumers
192 by increasing the quality and efficiency of health care
193 throughout the state. It is the intent of the Legislature that
194 the state promote and coordinate the establishment of a secure,
195 privacy-protected, and interconnected statewide health
196 information exchange.

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

198 (a) "Electronic medical record" means a record of a
199 person's medical treatment created by a licensed health care
200 provider and stored in an interoperable and accessible digital
201 format.

202 (b) "Electronic medical records system" means an
203 application environment composed of at least two of the following

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204 systems: a clinical data repository; clinical decision support;
205 controlled medical vocabulary; computerized provider order entry;
206 pharmacy; or clinical documentation. The application must be used
207 by health care practitioners to document, monitor, and manage
208 health care delivery within a health care delivery system and
209 must be capable of interoperability within a health information
210 exchange.

211 (c) "Health information exchange" means an electronic
212 system used to process or transmit electronic medical records
213 that can be shared in real time among authorized health care
214 providers, health care facilities, health insurers, and other
215 recipients, as authorized by law, to facilitate the provision of
216 health care services.

217 (d) "Health information organization" means an entity that
218 has a formal structure and established policies and procedures
219 and that serves as a neutral convener of local stakeholders to
220 enable the secure and reliable exchange of electronic medical
221 records among authorized health care stakeholders within a
222 defined geographic region to facilitate improvements in health
223 care quality, safety, and coordination of care.

224 (4) MATCHING GRANTS.--

225 (a) Subject to a specific appropriation, the agency shall
226 award and monitor matching grants to health information
227 organizations that submit proposals that advance the development
228 of a statewide health information exchange. Funds awarded under
229 this subsection shall be awarded on the basis of matching each \$1
230 of state funds with \$1 of local or private funds. Local or
231 private funds may be provided in the form of cash or in-kind
232 support or services. Grants may be awarded within the following

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233 categories: development, operation, and collaboration.

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

238 1. For development grants, the proposed organizational
239 structure, the level of community support, including a list of
240 key participants, a demonstration of available local or private
241 matching funds, a timeline for development of the health
242 information exchange, and proposed goals and metrics.

243 2. For operation grants, a demonstration of available local
244 or private matching funds and a detailed business plan, which
245 shall include a timeline for implementation of the health
246 information exchange, policies and procedures to protect the
247 privacy and security of electronic medical records, and proposed
248 goals and metrics.

249 3. For collaboration grants, a demonstration of available
250 local or private matching funds, memoranda of understanding
251 between at least two health information organizations for the
252 exchange of electronic medical records, a demonstration of
253 consistent utilization of the health information exchange by
254 members within each participating health information
255 organization, and a detailed business plan, which shall include a
256 timeline for the implementation of the exchange of electronic
257 medical records between participating health information
258 organizations, policies and procedures to protect the privacy and
259 security of electronic medical records, and proposed goals and
260 metrics.

261 (c) Beginning July 1, 2008, the agency may not award a

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262 health information organization more than 6 aggregate years of
263 funding.

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

266 (5) ELECTRONIC MEDICAL RECORDS SYSTEM ADOPTION LOAN
267 PROGRAM.--

268 (a) Subject to a specific appropriation, the agency shall
269 operate an Electronic Medical Records System Adoption Loan
270 Program for the purpose of providing a one-time, no-interest loan
271 to eligible physicians licensed under chapter 458 or chapter 459,
272 to an eligible business entity whose shareholders are licensed
273 under chapter 458 or chapter 459, or to an eligible faculty
274 practice plan of a state university for the initial costs of
275 implementing an electronic medical records system.

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

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

282 1. Been found guilty of violating s. 456.072(1) or been
283 disciplined under the applicable licensing chapter in the
284 previous 5 years.

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

287 3. Been sanctioned pursuant to s. 409.913 for fraud or
288 abuse.

289 (d) A loan may be provided to an eligible physician,
290 business entity, or faculty practice plan in a lump-sum amount to

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291 pay for the costs of purchasing hardware and software,
292 subscription services, professional consultation, and staff
293 training. The agency shall provide guidance to loan recipients by
294 providing, at a minimum, a list of electronic medical record
295 systems recognized or certified by national standards-setting
296 entities as capable of being used to communicate with a health
297 information exchange.

298 (e) The agency shall distribute a minimum of 25 percent of
299 funds appropriated to this program to physicians or business
300 entities operating within a rural county as defined in s.
301 288.106(1)(r).

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

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

308 2. Equal periodic payments that commence within 3 months
309 after the funding of the loan.

310 3. The eligible physician, business entity, or faculty
311 practice plan to execute a promissory note and a security
312 agreement in favor of the state. The security agreement shall be
313 a purchase-money security interest pledging as collateral for the
314 loan the specific hardware and software purchased with the loan
315 proceeds. The agency shall prepare and record a financing
316 statement under chapter 679. The physician or business entity
317 shall pay the cost of recording the financing statement. The
318 security agreement shall further require that the physician or
319 business entity pay all collection costs, including attorney's

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320 | fees.

321 | (g) The agency shall require the physician or business
322 | entity to provide additional security under one of the following
323 | subparagraphs:

324 | 1. An irrevocable letter of credit, as defined in chapter
325 | 675, in an amount equal to the amount of the loan.

326 | 2. An escrow account consisting of cash or assets eligible
327 | for deposit in accordance with s. 625.52 in an amount equal to
328 | the amount of the loan. If the escrow agent is responsible for
329 | making the periodic payments on the loan, the required escrow
330 | balance may be diminished as payments are made.

331 | 3. A pledge of the accounts receivables of the physician or
332 | business entity. This pledge shall be reflected on the financing
333 | statement.

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

337 | (i) If a physician, business entity, or university whose
338 | faculty practice plan has received a loan under this section
339 | ceases to provide care or services to patients, or if the
340 | physician, business entity, or faculty practice plan defaults in
341 | any payment and the default continues for 30 days, the entire
342 | loan balance shall be immediately due and payable and shall bear
343 | interest from that point forward at the rate of 18 percent
344 | annually. Upon default, the agency may offset any moneys owed to
345 | the physician, business entity, or faculty practice plan from the
346 | state and apply the offset against the outstanding balance.

347 | (j) If a physician defaults in any payment and if the
348 | default continues for 30 days, the default constitutes grounds

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349 for disciplinary action under chapter 458 or chapter 459 and s.
350 456.072 (1) (k) .

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

352 (a) The Florida Health Information Exchange Advisory
353 Council is an advisory council as defined in s. 20.03 and is
354 created adjunct to the agency. The council is subject to the
355 requirements of s. 20.052, except that only state officers and
356 employees shall be reimbursed for per diem and travel expenses
357 pursuant to s. 112.061.

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

359 1. Promote participation in regional and statewide health
360 information exchanges and adoption of health information
361 technology to support the infrastructure capacity for regional
362 and statewide health information exchanges.

363 2. Conduct outreach and convene forums to educate
364 stakeholders regarding the benefits of using a health information
365 exchange.

366 3. Provide guidance to stakeholders regarding the effective
367 use of health information exchanges and standards for protecting
368 the privacy and security of electronic medical records.

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

370 1. The Secretary of Health Care Administration, or his or
371 her designee.

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

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

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

376 b. One member must be a consumer who is a resident of the
377 state.

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

380 a. One member must be from a hospital using an electronic
381 medical records system.

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

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

386 d. One member must be from a federally qualified health
387 center or other rural health organization utilizing an electronic
388 medical records system.

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

391 a. One member must be from a hospital using an electronic
392 medical records system.

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

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

397 d. One member must be from a federally qualified health
398 center or other rural health organization utilizing an electronic
399 medical records system.

400 (d) A member who is a representative of an operating health
401 information organization in the state must recuse himself or
402 herself during discussion, evaluation, or recommendation of a
403 grant application.

404 (e) Each member of the council subject to appointment shall
405 be appointed to a term of 4 years following the date of
406 appointment. A vacancy shall be filled by appointment for the

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407 remainder of the term. Appointments shall be made within 45 days
408 after the effective date of this section.

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

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

414 (h) A majority of the members constitutes a quorum and the
415 affirmative vote of a majority of a quorum is necessary to take
416 action.

417 (i) The council shall develop recommendations to:

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

422 2. Remove barriers, including, but not limited to,
423 technological, regulatory, and financial barriers, which limit
424 participation by health care providers, health care facilities,
425 and health insurers in a health information exchange.

426 3. Remove barriers that prevent consumers from having
427 access to their electronic medical records.

428 4. Provide incentives to promote participation by health
429 care providers, health care facilities, and health insurers in
430 health information exchanges.

431 5. Identify health care data held by state agencies and
432 remove barriers to making that data available to authorized
433 recipients through health information exchanges in a private and
434 secure manner.

435 6. Increase state agency participation in health

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436 information exchanges.

437 7. Enter into partnerships with other state, regional, and
438 federal entities to promote and coordinate health information
439 exchange efforts.

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

442 9. Consult with experts regarding the use of health
443 information in medical research to ensure that all
444 recommendations take into account the legitimate uses of health
445 care information for biomedical research, drug development,
446 clinical trials, post-approval surveillance, and public health
447 and public agency reporting requirements.

448
449 The council shall establish ad hoc issue-oriented technical
450 workgroups on an as-needed basis to make recommendations to the
451 council.

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

456 (k) Beginning July 1, 2009, the council shall annually
457 provide a report to the Governor, the President of the Senate,
458 the Speaker of the House of Representatives, and the chairs of
459 the appropriate substantive committees of the Senate and the
460 House of Representatives which includes, but is not limited to,
461 the recommendations regarding the council's duties and
462 responsibilities. In addition, by July 1, 2010, the council shall
463 recommend a long-term plan to create an interoperable statewide
464 network of health information organizations to the Governor, the

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465 President of the Senate, the Speaker of the House of
466 Representatives, and the chairs of the appropriate substantive
467 committees of the Senate and the House of Representatives.

468 (1) This subsection is repealed and the council shall stand
469 abolished July 1, 2012, unless reviewed and saved from repeal
470 through reenactment by the Legislature.

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

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

474 1. Federal and private-sector health information exchange
475 funding programs, including analyses of successful local and
476 state recipients of the programs, as well as unsuccessful local
477 and state applicants of the programs.

478 2. A clearinghouse of state and national legislative,
479 regulatory, and public awareness activities related to health
480 information exchanges.

481 (b) The agency shall develop and implement a plan that
482 promotes, at a minimum, participation in regional and statewide
483 health information exchanges and the adoption of electronic
484 medical record systems by physicians through the Electronic
485 Medical Records System Adoption Loan Program, in consultation
486 with the Florida Health Information Exchange Advisory Council,
487 organizations representing allopathic and osteopathic practicing
488 physicians, the Board of Medicine, and the Board of Osteopathic
489 Medicine.

490 (8) PROGRAM EVALUATION; REPORT.--The Office of Program
491 Policy Analysis and Government Accountability shall complete an
492 independent evaluation of the grants program administered by the
493 agency. The evaluation must include, at a minimum, assessments of

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494 the grant evaluation and distribution process; the way in which
495 grant dollars are spent; the level of participation by entities
496 within each grantee's project; the extent of clinical data
497 exchange among entities within each grantee's project; the
498 sources of funding for each grantee; and the feasibility of each
499 grantee achieving long-term sustainability without state grant
500 funding. The evaluation must assess the level at which the
501 current grants program is advancing the development of a
502 statewide health information exchange and recommend other
503 programs that may accomplish the same goal. The report shall be
504 submitted to the Governor, the President of the Senate, the
505 Speaker of the House of Representatives, and the chairs of the
506 relevant committees in the Senate and the House of
507 Representatives no later than July 1, 2009.

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

510 408.062 Research, analyses, studies, and reports.--

511 ~~(5) The agency shall develop and implement a strategy for~~
512 ~~the adoption and use of electronic health records, including the~~
513 ~~development of an electronic health information network for the~~
514 ~~sharing of electronic health records among health care~~
515 ~~facilities, health care providers, and health insurers. The~~
516 ~~agency may develop rules to facilitate the functionality and~~
517 ~~protect the confidentiality of electronic health records. The~~
518 ~~agency shall report to the Governor, the Speaker of the House of~~
519 ~~Representatives, and the President of the Senate on legislative~~
520 ~~recommendations to protect the confidentiality of electronic~~
521 ~~health records.~~

522 Section 5. Subsection (2) of section 483.181, Florida

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523 Statutes, is amended to read:

524 483.181 Acceptance, collection, identification, and
525 examination of specimens.--

526 (2) The results of a test must be reported directly to the
527 licensed practitioner or other authorized person who requested it
528 and appropriate disclosure may be made by the clinical laboratory
529 without a patient's consent to other health care practitioners
530 and providers involved in the care or treatment of the patient
531 for use in connection with the treatment of the patient. The
532 report must include the name and address of the clinical
533 laboratory in which the test was actually performed, unless the
534 test was performed in a hospital laboratory and the report
535 becomes an integral part of the hospital record.

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