

By Senator Jones

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1                   A bill to be entitled  
2           An act relating to medical quality assurance; amending s.  
3           395.0193, F.S.; requiring that disciplinary actions at a  
4           licensed health care facility be reported to the Division  
5           of Medical Quality Assurance within the Department of  
6           Health rather than to the Division of Health Quality  
7           Assurance of the Agency for Health Care Administration;  
8           amending s. 395.0197, F.S.; requiring the Agency for  
9           Health Care Administration to forward a copy of a licensed  
10          facility's adverse incident report related to certain  
11          health care practitioners to the Division of Medical  
12          Quality Assurance; deleting the requirement of the agency  
13          or the appropriate regulatory board to make records  
14          available to a health care professional against whom  
15          probable cause has been found; deleting the agency's  
16          requirement to review an adverse incident and determine  
17          whether it involved conduct by a health care professional  
18          who is subject to disciplinary action; amending s.  
19          395.3025, F.S.; authorizing the disclosure of patient  
20          medical records without consent to the department for its  
21          investigation, prosecution, and appeal of disciplinary  
22          proceedings; requiring an administrator or custodian of  
23          records of a licensed facility to certify that a copy of  
24          records requested has been provided to the department;  
25          requiring the licensed facility to charge a reasonable fee  
26          for copies of records requested by the department;  
27          prohibiting the department from making the records  
28          available to the public; requiring the department to make  
29          the records available to a health care practitioner

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30 against whom probable cause has been found; amending s.  
31 400.141, F.S.; requiring a facility licensed under ch.  
32 400, F.S., to provide a certified copy of records upon  
33 subpoena to the department; amending s. 400.145, F.S.;  
34 requiring the administrator or records custodian at a  
35 facility licensed under ch. 400, F.S., to certify that a  
36 copy of records subpoenaed or requested by patient release  
37 has been provided to the department; amending s. 400.147,  
38 F.S.; providing that notification of an adverse incident  
39 at a facility licensed under ch. 400, F.S., is not  
40 discoverable or admissible in any civil or administrative  
41 action except in disciplinary proceedings by the  
42 department; requiring the department to review each  
43 adverse incident and determine whether it involved conduct  
44 by a health care professional who is subject to  
45 disciplinary action; requiring a copy of an adverse  
46 incident report be forwarded to the division for review;  
47 requiring the department to determine whether any of the  
48 adverse incidents involved conduct by a health care  
49 professional who is subject to disciplinary action;  
50 amending s. 456.057, F.S.; providing that the employer or  
51 clinic is the responsible records owner of abandoned  
52 medical records following abandonment of records or  
53 closure of a clinic or facility; authorizing the  
54 department or the appropriate probable cause panel to find  
55 reasonable cause to subpoena patient's records without  
56 patient authorization under certain conditions; amending  
57 ss. 458.309 and 459.005, F.S.; deleting an exception to  
58 the department's requirement to annually inspect a

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59 | physician's office or an osteopathic physician's office  
60 | where certain medical procedures are performed; providing  
61 | an effective date.

62

63 | Be It Enacted by the Legislature of the State of Florida:

64

65 | Section 1. Subsection (4) of section 395.0193, Florida  
66 | Statutes, is amended to read:

67 | 395.0193 Licensed facilities; peer review; disciplinary  
68 | powers; agency or partnership with physicians.--

69 | (4) Pursuant to ss. 458.337 and 459.016, any disciplinary  
70 | actions taken under subsection (3) shall be reported in writing  
71 | to the Division of Medical Health Quality Assurance of the  
72 | department ~~agency~~ within 30 working days after its initial  
73 | occurrence, regardless of the pendency of appeals to the  
74 | governing board of the hospital. The notification shall identify  
75 | the disciplined practitioner, the action taken, and the reason  
76 | for such action. All final disciplinary actions taken under  
77 | subsection (3), if different from those that ~~which~~ were reported  
78 | to the division ~~agency~~ within 30 days after the initial  
79 | occurrence, shall be reported within 10 working days to the  
80 | Division of Medical Health Quality Assurance of the department  
81 | ~~agency~~ in writing and shall specify the disciplinary action taken  
82 | and the specific grounds therefor. The division shall review each  
83 | report and determine whether it potentially involved conduct by  
84 | the licensee that is subject to disciplinary action, in which  
85 | case s. 456.073 applies ~~shall apply~~. The reports are not subject  
86 | to inspection under s. 119.07(1) even if the division's  
87 | investigation results in a finding of probable cause.

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88 Section 2. Paragraphs (b) and (c) of subsection (6) and  
89 subsections (7) and (13) of section 395.0197, Florida Statutes,  
90 are amended to read:

91 395.0197 Internal risk management program.--

92 (6)

93 (b) The information reported to the agency pursuant to  
94 paragraph (a) which relates to health care practitioners as  
95 defined in s. 456.001 ~~persons licensed under chapter 458, chapter~~  
96 ~~459, chapter 461, or chapter 466~~ shall be reviewed by the agency.  
97 The agency shall forward a copy of the report of each incident to  
98 the Division of Medical Quality Assurance in the department to  
99 determine whether it ~~determine whether any of the incidents~~  
100 potentially involved conduct by a health care professional who is  
101 subject to disciplinary action, in which case the provisions of  
102 s. 456.073 shall apply.

103 (c) The report submitted to the agency shall also contain  
104 the name and license number of the risk manager of the licensed  
105 facility, a copy of its policy and procedures which govern the  
106 measures taken by the facility and its risk manager to reduce the  
107 risk of injuries and adverse incidents, and the results of such  
108 measures. The annual report is confidential and is not available  
109 to the public pursuant to s. 119.07(1) or any other law providing  
110 access to public records. The annual report is not discoverable  
111 or admissible in any civil or administrative action, except in  
112 disciplinary proceedings by the agency or the appropriate  
113 regulatory board. The annual report is not available to the  
114 public as part of the record of investigation for and prosecution  
115 in disciplinary proceedings made available to the public by the  
116 agency or the appropriate regulatory board. ~~However, the agency~~

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117 ~~or the appropriate regulatory board shall make available, upon~~  
118 ~~written request by a health care professional against whom~~  
119 ~~probable cause has been found, any such records which form the~~  
120 ~~basis of the determination of probable cause.~~

121 (7) Any of the following adverse incidents, whether  
122 occurring in the licensed facility or arising from health care  
123 prior to admission in the licensed facility, shall be reported by  
124 the facility to the agency within 15 calendar days after its  
125 occurrence:

126 (a) The death of a patient;

127 (b) Brain or spinal damage to a patient;

128 (c) The performance of a surgical procedure on the wrong  
129 patient;

130 (d) The performance of a wrong-site surgical procedure;

131 (e) The performance of a wrong surgical procedure;

132 (f) The performance of a surgical procedure that is  
133 medically unnecessary or otherwise unrelated to the patient's  
134 diagnosis or medical condition;

135 (g) The surgical repair of damage resulting to a patient  
136 from a planned surgical procedure, where the damage is not a  
137 recognized specific risk, as disclosed to the patient and  
138 documented through the informed-consent process; or

139 (h) The performance of procedures to remove unplanned  
140 foreign objects remaining from a surgical procedure.

141  
142 The agency may grant extensions to this reporting requirement for  
143 more than 15 days upon justification submitted in writing by the  
144 facility administrator to the agency. The agency may require an  
145 additional, final report. These reports shall not be available to

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146 the public pursuant to s. 119.07(1) or any other law providing  
147 access to public records, nor be discoverable or admissible in  
148 any civil or administrative action, except in disciplinary  
149 proceedings by the agency or the appropriate regulatory board,  
150 nor shall they be available to the public as part of the record  
151 of investigation for and prosecution in disciplinary proceedings  
152 made available to the public by the agency or the appropriate  
153 regulatory board. However, the agency or the appropriate  
154 regulatory board shall make available, upon written request by a  
155 health care professional against whom probable cause has been  
156 found, any such records which form the basis of the determination  
157 of probable cause. The agency may investigate, as it deems  
158 appropriate, any such incident and prescribe measures that must  
159 or may be taken in response to the incident. ~~The agency shall~~  
160 ~~review each incident and determine whether it potentially~~  
161 ~~involved conduct by the health care professional who is subject~~  
162 ~~to disciplinary action, in which case the provisions of s.~~  
163 ~~456.073 shall apply.~~

164 (13) The agency shall have access to all licensed facility  
165 records necessary to carry out the provisions of this section.  
166 The records obtained by the agency under subsection (6),  
167 subsection (7), or subsection (9) are not available to the public  
168 under s. 119.07(1), nor shall they be discoverable or admissible  
169 in any civil or administrative action, except in disciplinary  
170 proceedings by the agency or the appropriate regulatory board,  
171 nor shall records obtained pursuant to s. 456.071 be available to  
172 the public as part of the record of investigation for and  
173 prosecution in disciplinary proceedings made available to the  
174 public by the agency or the appropriate regulatory board.

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175 ~~However, the agency or the appropriate regulatory board shall~~  
176 ~~make available, upon written request by a health care~~  
177 ~~professional against whom probable cause has been found, any such~~  
178 ~~records which form the basis of the determination of probable~~  
179 ~~cause, except that, with respect to medical review committee~~  
180 ~~records, s. 766.101 controls.~~

181 Section 3. Paragraph (e) of subsection (4) of section  
182 395.3025, Florida Statutes, is amended to read:

183 395.3025 Patient and personnel records; copies;  
184 examination.--

185 (4) Patient records are confidential and must not be  
186 disclosed without the consent of the person to whom they pertain,  
187 but appropriate disclosure may be made without such consent to:

188 (e) The department agency upon subpoena issued pursuant to  
189 s. 456.071, but the records obtained thereby must be used solely  
190 for the purpose of the department agency and the appropriate  
191 professional board in its investigation, prosecution, and appeal  
192 of disciplinary proceedings. The administrator or records  
193 custodian in a facility licensed under this chapter shall certify  
194 that a true and complete copy of the records requested pursuant  
195 to a subpoena or patient release has been provided to the  
196 department or shall otherwise identify those documents that have  
197 not been provided. If the department agency requests copies of  
198 the records, the facility shall charge a reasonable fee as  
199 determined by rule of the department ~~no more than its actual~~  
200 ~~copying costs, including reasonable staff time.~~ The records must  
201 be sealed and must not be available to the public pursuant to s.  
202 119.07(1) or any other statute providing access to records, nor  
203 may they be available to the public as part of the record of

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204 investigation for and prosecution in disciplinary proceedings  
205 made available to the public by the department ~~agency~~ or the  
206 appropriate regulatory board. However, the department ~~agency~~ must  
207 make available, upon written request by a practitioner against  
208 whom probable cause has been found, any such records that form  
209 the basis of the determination of probable cause.

210 Section 4. Subsection (10) of section 400.141, Florida  
211 Statutes, is amended to read:

212 400.141 Administration and management of nursing home  
213 facilities.--Every licensed facility shall comply with all  
214 applicable standards and rules of the agency and shall:

215 (10) Keep full records of resident admissions and  
216 discharges; medical and general health status, including medical  
217 records, personal and social history, and identity and address of  
218 next of kin or other persons who may have responsibility for the  
219 affairs of the residents; and individual resident care plans  
220 including, but not limited to, prescribed services, service  
221 frequency and duration, and service goals. The records shall be  
222 open to inspection by the agency. A certified true and complete  
223 copy of the records shall be provided to the Department of Health  
224 upon subpoena issued pursuant to ss. 456.057 and 456.071. Chapter  
225 456 applies to the records obtained pursuant to this section.

226  
227 Facilities that have been awarded a Gold Seal under the program  
228 established in s. 400.235 may develop a plan to provide certified  
229 nursing assistant training as prescribed by federal regulations  
230 and state rules and may apply to the agency for approval of their  
231 program.



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232 Section 5. Subsection (3) is added to section 400.145,  
233 Florida Statutes, to read:

234 400.145 Records of care and treatment of resident; copies  
235 to be furnished.--

236 (3) The administrator or records custodian in a facility  
237 licensed under this chapter shall certify that a true and  
238 complete copy of records subpoenaed pursuant to ss. 456.057 and  
239 456.071 or requested by patient release have been provided to the  
240 Department of Health or shall otherwise identify those documents  
241 that have not been provided.

242 Section 6. Subsection (7) and paragraph (b) of subsection  
243 (8) of section 400.147, Florida Statutes, are amended to read:

244 400.147 Internal risk management and quality assurance  
245 program.--

246 (7) The facility shall initiate an investigation and shall  
247 notify the agency within 1 business day after the risk manager or  
248 his or her designee has received a report pursuant to paragraph  
249 (1)(d). The notification must be made in writing and be provided  
250 electronically, by facsimile device or overnight mail delivery.  
251 The notification must include information regarding the identity  
252 of the affected resident, the type of adverse incident, the  
253 initiation of an investigation by the facility, and whether the  
254 events causing or resulting in the adverse incident represent a  
255 potential risk to any other resident. The notification is  
256 confidential as provided by law and is not discoverable or  
257 admissible in any civil or administrative action, except in  
258 disciplinary proceedings by the Department of Health ~~agency~~ or  
259 the appropriate regulatory board. The agency may investigate, as  
260 it deems appropriate, any such incident and prescribe measures

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261 that must or may be taken in response to the incident. The  
262 Department of Health ~~agency~~ shall review each incident and  
263 determine whether it potentially involved conduct by the health  
264 care professional who is subject to disciplinary action, in which  
265 case the provisions of s. 456.073 shall apply.

266 (8)

267 (b) A copy of the report submitted ~~The information reported~~  
268 to the agency pursuant to paragraph (a) which relates to health  
269 care practitioners as defined in s. 456.001 shall be forwarded to  
270 the Division of Medical Quality Assurance within the Department  
271 of Health for review ~~persons licensed under chapter 458, chapter~~  
272 ~~459, chapter 461, or chapter 466 shall be reviewed by the agency.~~  
273 The Department of Health ~~agency~~ shall determine whether any of  
274 the incidents potentially involved conduct by a health care  
275 professional who is subject to disciplinary action, in which case  
276 the provisions of s. 456.073 shall apply.

277 Section 7. Subsection (1) and paragraph (a) of subsection  
278 (9) of section 456.057, Florida Statutes, are amended to read:

279 456.057 Ownership and control of patient records; report or  
280 copies of records to be furnished.--

281 (1) As used in this section, the term "records owner" means  
282 any health care practitioner who generates a medical record after  
283 making a physical or mental examination of, or administering  
284 treatment or dispensing legend drugs to, any person; any health  
285 care practitioner to whom records are transferred by a previous  
286 records owner; or any health care practitioner's employer,  
287 including, but not limited to, group practices and staff-model  
288 health maintenance organizations, provided the employment  
289 contract or agreement between the employer and the health care

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290 practitioner designates the employer as the records owner.  
291 However, with regard to abandoned medical records, the employer  
292 or clinic is deemed the responsible records owner following  
293 abandonment of records or closure of a clinic or facility  
294 regardless of the contract.

295 (9) (a)1. The department may obtain patient records pursuant  
296 to a subpoena without written authorization from the patient if  
297 the department and the probable cause panel of the appropriate  
298 board, if any, find reasonable cause to believe that a health  
299 care practitioner has excessively or inappropriately prescribed  
300 any controlled substance specified in chapter 893 in violation of  
301 this chapter or any professional practice act or that a health  
302 care practitioner has practiced his or her profession below that  
303 level of care, skill, and treatment required as defined by this  
304 chapter or any professional practice act and also find that  
305 appropriate, reasonable attempts were made to obtain a patient  
306 release. The department or the appropriate probable cause panel  
307 may find reasonable cause to subpoena patient records without  
308 written authorization from the patient if the patient refuses to  
309 cooperate or if, in the department's discretion, any attempt to  
310 obtain a patient release would be detrimental to completing the  
311 investigation.

312 2. The department may obtain patient records and insurance  
313 information pursuant to a subpoena without written authorization  
314 from the patient if the department and the probable cause panel  
315 of the appropriate board, if any, find reasonable cause to  
316 believe that a health care practitioner has provided inadequate  
317 medical care based on termination of insurance and also find that

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318 appropriate, reasonable attempts were made to obtain a patient  
319 release.

320 3. The department may obtain patient records, billing  
321 records, insurance information, provider contracts, and all  
322 attachments thereto pursuant to a subpoena without written  
323 authorization from the patient if the department and probable  
324 cause panel of the appropriate board, if any, find reasonable  
325 cause to believe that a health care practitioner has submitted a  
326 claim, statement, or bill using a billing code that would result  
327 in payment greater in amount than would be paid using a billing  
328 code that accurately describes the services performed, requested  
329 payment for services that were not performed by that health care  
330 practitioner, used information derived from a written report of  
331 an automobile accident generated pursuant to chapter 316 to  
332 solicit or obtain patients personally or through an agent  
333 regardless of whether the information is derived directly from  
334 the report or a summary of that report or from another person,  
335 solicited patients fraudulently, received a kickback as defined  
336 in s. 456.054, violated the patient brokering provisions of s.  
337 817.505, or presented or caused to be presented a false or  
338 fraudulent insurance claim within the meaning of s.  
339 817.234(1)(a), and also find that, within the meaning of s.  
340 817.234(1)(a), patient authorization cannot be obtained because  
341 the patient cannot be located or is deceased, incapacitated, or  
342 suspected of being a participant in the fraud or scheme, and if  
343 the subpoena is issued for specific and relevant records.

344 4. Notwithstanding subparagraphs 1.-3., when the department  
345 investigates a professional liability claim or undertakes action  
346 pursuant to s. 456.049 or s. 627.912, the department may obtain

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347 patient records pursuant to a subpoena without written  
348 authorization from the patient if the patient refuses to  
349 cooperate or if the department attempts to obtain a patient  
350 release and the failure to obtain the patient records would be  
351 detrimental to the investigation.

352 Section 8. Subsection (3) of section 458.309, Florida  
353 Statutes, is amended to read:

354 458.309 Rulemaking authority.--

355 (3) All physicians who perform level 2 procedures lasting  
356 more than 5 minutes and all level 3 surgical procedures in an  
357 office setting must register the office with the department  
358 unless that office is licensed as a facility pursuant to chapter  
359 395. The department shall inspect the physician's office annually  
360 unless the office is accredited by a nationally recognized  
361 accrediting agency ~~or an accrediting organization subsequently~~  
362 ~~approved by the Board of Medicine~~. The actual costs for  
363 registration and inspection or accreditation shall be paid by the  
364 person seeking to register and operate the office setting in  
365 which office surgery is performed.

366 Section 9. Subsection (2) of section 459.005, Florida  
367 Statutes, is amended to read:

368 459.005 Rulemaking authority.--

369 (2) All physicians who perform level 2 procedures lasting  
370 more than 5 minutes and all level 3 surgical procedures in an  
371 office setting must register the office with the department  
372 unless that office is licensed as a facility pursuant to chapter  
373 395. The department shall inspect the physician's office annually  
374 unless the office is accredited by a nationally recognized  
375 accrediting agency ~~or an accrediting organization subsequently~~

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376 ~~approved by the Board of Osteopathic Medicine.~~ The actual costs  
377 for registration and inspection or accreditation shall be paid by  
378 the person seeking to register and operate the office setting in  
379 which office surgery is performed.

380 Section 10. This act shall take effect upon becoming a law.