

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
 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:

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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
 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
 63 its 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
 66 to records, nor may they be available to the public as part of
 67 the record of investigation for and prosecution in disciplinary
 68 proceedings made available to the public by the department
 69 ~~agency~~ or the appropriate regulatory board. However, the
 70 department ~~agency~~ must make available, upon written request by a
 71 practitioner against whom probable cause has been found, any
 72 such records that form the basis of the determination of
 73 probable 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
 88 in 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
 98 in 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.

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
 121 technology, informatics, and the exchange of health information
 122 and maintain a repository of technical resources to support the
 123 development of a health information exchange network.

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

138 408.051 Florida eHealth Initiative Act.--

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

141 (2) LEGISLATIVE INTENT.--The Legislature recognizes that
142 the exchange of electronic medical records will benefit
143 consumers by increasing the quality and efficiency of health
144 care throughout the state. It is the intent of the Legislature
145 that the state promote and coordinate the establishment of a
146 secure, 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
154 application environment composed of at least two of the
155 following systems: a clinical data repository; clinical decision
156 support; controlled medical vocabulary; computerized provider
157 order entry; pharmacy; or clinical documentation. The
158 application must be used by health care practitioners to
159 document, monitor, and manage health care delivery within a
160 health care delivery system and must be capable of
161 interoperability within a health information exchange.

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

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

175 (4) MATCHING GRANTS.--

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

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

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

194 2. For operation grants, a demonstration of available
195 local or private matching funds and a detailed business plan,

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196 which shall include a timeline for implementation of the health
197 information exchange, policies and procedures to protect the
198 privacy and security of electronic medical records, and proposed
199 goals and metrics.

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

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

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

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

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

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224 458 or chapter 459 for the initial costs of implementing an
225 electronic medical records system.

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

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

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

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

237 3. Been sanctioned pursuant to s. 409.913 for fraud or
238 abuse.

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

247 (e) The agency shall distribute a minimum of 25 percent of
248 funds appropriated to this program to physicians or business
249 entities operating within a rural county as defined in s.
250 288.106(1)(r).

251 (f) The agency shall, by rule, develop standard terms and

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252 conditions for use in this program. At a minimum, these terms
253 and conditions shall require:

254 1. Loan repayment by the physician or business entity
255 within a reasonable period of time, which may not be longer than
256 72 months after the funding of the loan.

257 2. Equal periodic payments that commence within 3 months
258 after the funding of the loan.

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

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

273 1. An irrevocable letter of credit, as defined in chapter
274 675, in an amount equal to the amount of the loan.

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

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

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

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

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

300 (6) FLORIDA HEALTH INFORMATION EXCHANGE ADVISORY
 301 COUNCIL.--

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

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

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308 1. Promote participation in regional and statewide health
309 information exchanges and adoption of health information
310 technology to support the infrastructure capacity for regional
311 and statewide health information exchanges.

312 2. Conduct outreach and convene forums to educate
313 stakeholders regarding the benefits of utilizing a health
314 information exchange.

315 3. Provide guidance to stakeholders regarding the
316 effective use of health information exchanges and standards for
317 protecting the privacy and security of electronic medical
318 records.

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

320 1. The Secretary of Health Care Administration, or his or
321 her designee.

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

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

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

326 b. One member must be a consumer who is a resident of the
327 state.

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

330 a. One member must be from a public hospital utilizing an
331 electronic medical records system.

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

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

336 d. One member must be from a federally qualified health
337 center or other rural health organization utilizing an
338 electronic medical records system.

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

341 a. One member must be from a public hospital utilizing an
342 electronic medical records system.

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

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

347 d. One member must be from a federally qualified health
348 center or other rural health organization utilizing an
349 electronic medical records system.

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

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

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

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

364 (h) A majority of the members constitutes a quorum and the
 365 affirmative vote of a majority of a quorum is necessary to take
 366 action.

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

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

373 2. Remove barriers, including, but not limited to,
 374 technological, regulatory, and financial barriers, that limit
 375 participation by health care providers, health care facilities,
 376 and health insurers in a health information exchange.

377 3. Remove barriers that prevent consumers from having
 378 access to their electronic medical records.

379 4. Provide incentives to promote participation by health
 380 care providers, health care facilities, and health insurers in
 381 health information exchanges.

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

386 6. Increase state agency participation in health
 387 information exchanges.

388 7. Partner with other state, regional, and federal
 389 entities to promote and coordinate health information exchange
 390 efforts.

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

393

394 The council shall establish ad hoc issue-oriented technical
395 workgroups on an as-needed basis to make recommendations to the
396 council.

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

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

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

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

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

420 1. Federal and private sector health information exchange
421 funding programs, including analyses of successful local and
422 state recipients of the programs, as well as unsuccessful local
423 and state applicants of the programs.

424 2. A clearinghouse of state and national legislative,
425 regulatory, and public awareness activities related to health
426 information exchanges.

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

436 (8) PROGRAM EVALUATION; REPORT.--The Office of Program
437 Policy Analysis and Government Accountability shall complete an
438 independent evaluation of the grants program administered by the
439 agency. The evaluation must include, at a minimum, assessments
440 of the grant evaluation and distribution process; the way in
441 which grant dollars are spent; the level of participation by
442 entities within each grantee's project; the extent of clinical
443 data exchange among entities within each grantee's project; the
444 sources of funding for each grantee; and the feasibility of each
445 grantee achieving long-term sustainability without state grant

446 funding. The evaluation must assess the level at which the
 447 current grants program is advancing the development of a
 448 statewide health information exchange and recommend other
 449 programs that may accomplish the same goal. The report shall be
 450 submitted to the Governor, the President of the Senate, the
 451 Speaker of the House of Representatives, and the chairs of the
 452 relevant committees in the Senate and the House of
 453 Representatives no later than July 1, 2009.

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

456 408.062 Research, analyses, studies, and reports.--

457 ~~(5) The agency shall develop and implement a strategy for~~
 458 ~~the adoption and use of electronic health records, including the~~
 459 ~~development of an electronic health information network for the~~
 460 ~~sharing of electronic health records among health care~~
 461 ~~facilities, health care providers, and health insurers. The~~
 462 ~~agency may develop rules to facilitate the functionality and~~
 463 ~~protect the confidentiality of electronic health records. The~~
 464 ~~agency shall report to the Governor, the Speaker of the House of~~
 465 ~~Representatives, and the President of the Senate on legislative~~
 466 ~~recommendations to protect the confidentiality of electronic~~
 467 ~~health records.~~

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

470 483.181 Acceptance, collection, identification, and
 471 examination of specimens.--

472 (2) The results of a test must be reported directly to the
 473 licensed practitioner or other authorized person who requested

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474 | it, and appropriate disclosure may be made by the clinical
475 | laboratory without a patient's consent to other health care
476 | practitioners and providers involved in the care or treatment of
477 | the patient for use in connection with the treatment of the
478 | patient. The report must include the name and address of the
479 | clinical laboratory in which the test was actually performed,
480 | unless the test was performed in a hospital laboratory and the
481 | report becomes an integral part of the hospital record.

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