

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 health
4 records to facilitate the electronic exchange of data
5 between certain health care facility personnel,
6 practitioners, and providers and attending physicians;
7 creating s. 408.051, F.S.; creating the "Florida
8 Electronic Health Records Exchange Act"; providing
9 definitions; authorizing the release of certain health
10 records under emergency medical conditions without patient
11 consent; providing for immunity from civil liability;
12 providing duties of the agency with regard to the
13 availability of specified information on the agency's
14 Internet website; requiring the agency to develop and
15 implement a universal patient authorization form in paper
16 and electronic formats for the release of certain health
17 records; providing procedures for use of the form;
18 providing penalties; providing for certain compensation
19 and attorney's fees and costs; creating s. 408.0512, F.S.;
20 requiring the Agency for Health Care Administration to
21 operate an electronic medical records system adoption loan
22 program, subject to specific appropriation; providing
23 eligibility criteria; prohibiting the agency from
24 providing loans to physicians or businesses that have
25 violated certain provisions of law; providing for uses of
26 the loan; providing guidelines for distribution of funds
27 by the agency; requiring the agency to develop terms and
28 conditions for the loan program; requiring physicians and

29 | businesses to provide additional security agreements under
 30 | certain circumstances; providing for payments to be
 31 | deposited in the agency's Administrative Trust Fund;
 32 | establishing procedures for managing cases of default;
 33 | amending s. 483.181, F.S.; expanding access to laboratory
 34 | reports to facilitate the exchange of data between certain
 35 | health care practitioners and providers; providing an
 36 | effective date.

37 |
 38 | WHEREAS, the use of electronic health information
 39 | technology has been proven to benefit consumers by increasing
 40 | the quality and efficiency of health care delivery throughout
 41 | the state, and

42 | WHEREAS, clear and concise standards for sharing privacy-
 43 | protected medical information among authorized health care
 44 | providers will enable providers to have cost-effective access to
 45 | the medical information needed to make sound decisions about
 46 | health care, and

47 | WHEREAS, maintaining the privacy and security of
 48 | identifiable health records is essential to the adoption of
 49 | procedures for sharing of electronic health records among health
 50 | care providers involved in the treatment of patients, NOW,
 51 | THEREFORE,

52 |
 53 | Be It Enacted by the Legislature of the State of Florida:

54 |
 55 | Section 1. Subsection (4) of section 395.3025, Florida
 56 | Statutes, is amended to read:

HB 1097

2009

57 | 395.3025 Patient and personnel records; copies;
58 | examination.--

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

63 | (a) Licensed facility personnel, ~~and~~ attending physicians,
64 | or other health care practitioners and providers currently
65 | involved in the care or treatment of the patient for use only in
66 | connection with the treatment of the patient.

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

69 | (c) The agency, for purposes of health care cost
70 | containment.

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

75 | (e) The agency upon subpoena issued pursuant to s.
76 | 456.071, but the records obtained thereby must be used solely
77 | for the purpose of the agency and the appropriate professional
78 | board in its investigation, prosecution, and appeal of
79 | disciplinary proceedings. If the agency requests copies of the
80 | records, the facility shall charge no more than its actual
81 | copying costs, including reasonable staff time. The records must
82 | be sealed and must not be available to the public pursuant to s.
83 | 119.07(1) or any other statute providing access to records, nor
84 | may they be available to the public as part of the record of

85 investigation for and prosecution in disciplinary proceedings
86 made available to the public by the agency or the appropriate
87 regulatory board. However, the agency must make available, upon
88 written request by a practitioner against whom probable cause
89 has been found, any such records that form the basis of the
90 determination of probable cause.

91 (f) The Department of Health or its agent, for the purpose
92 of establishing and maintaining a trauma registry and for the
93 purpose of ensuring that hospitals and trauma centers are in
94 compliance with the standards and rules established under ss.
95 395.401, 395.4015, 395.4025, 395.404, 395.4045, and 395.405, and
96 for the purpose of monitoring patient outcome at hospitals and
97 trauma centers that provide trauma care services.

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

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

111 (i) A local trauma agency or a regional trauma agency that
112 performs quality assurance activities, or a panel or committee

113 assembled to assist a local trauma agency or a regional trauma
 114 agency in performing quality assurance activities. Patient
 115 records obtained under this paragraph are confidential and
 116 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 117 Constitution.

118 (j) Organ procurement organizations, tissue banks, and eye
 119 banks required to conduct death records reviews pursuant to s.
 120 395.2050.

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

123 (l) The Department of Financial Services, or an agent,
 124 employee, or independent contractor of the department who is
 125 auditing for unclaimed property pursuant to chapter 717.

126 (m) A regional poison control center for purposes of
 127 treating a poison episode under evaluation, case management of
 128 poison cases, or compliance with data collection and reporting
 129 requirements of s. 395.1027 and the professional organization
 130 that certifies poison control centers in accordance with federal
 131 law.

132 Section 2. Section 408.051, Florida Statutes, is created
 133 to read:

134 408.051 Florida Electronic Health Records Exchange Act.--

135 (1) SHORT TITLE.--This section may be cited as the
 136 "Florida Electronic Health Records Exchange Act."

137 (2) DEFINITIONS.--As used in this section, the term:

138 (a) "Electronic health record" means a record of a
 139 person's medical treatment that is created by a licensed health
 140 care provider and stored in an interoperable and accessible

HB 1097

2009

141 digital format.

142 (b) "Electronic health records system" means an
143 application environment consisting of at least two of the
144 following components: a clinical data repository, clinical
145 decision support, a controlled medical vocabulary, a
146 computerized provider order entry, a pharmacy, or clinical
147 documentation. The application must be used by health care
148 practitioners to document, monitor, and manage health care
149 delivery within a health care delivery system and must be
150 capable of interoperability within a health information
151 exchange.

152 (c) "Health information exchange" means an electronic
153 health records system used to acquire, process, and transmit
154 electronic health records that can be shared in real time among
155 authorized health care providers, health care facilities, health
156 insurers, and other recipients, as authorized by law, to
157 facilitate the provision of health care services.

158 (d) "Health record" means any information, recorded in any
159 form or medium, that relates to the past, present, or future
160 health of an individual for the primary purpose of providing
161 health care and health-related services.

162 (e) "Identifiable health record" means any health record
163 that identifies the patient or with respect to which there is a
164 reasonable basis to believe the information can be used to
165 identify the patient.

166 (f) "Patient" means an individual who has sought, is
167 seeking, is undergoing, or has undergone care or treatment in a
168 health care facility or by a health care provider.

HB 1097

2009

169 (g) "Patient representative" means a parent of a minor
170 patient, a court-appointed guardian for the patient, a health
171 care surrogate, or a person holding a power of attorney or
172 notarized consent appropriately executed by the patient granting
173 permission to a health care facility or health care provider to
174 disclose the patient's health care information to that person.
175 In the case of a deceased patient, the term also means the
176 personal representative of the estate of the deceased patient;
177 the deceased patient's surviving spouse, surviving parent, or
178 surviving adult child; the parent or guardian of a surviving
179 minor child of the deceased patient; or the attorney for any
180 such person.

181 (3) EMERGENCY RELEASE OF IDENTIFIABLE HEALTH RECORD.--A
182 health care provider may release or access an identifiable
183 health record of a patient without the patient's consent for use
184 in the treatment of the patient for an emergency medical
185 condition, as defined in s. 395.002(8), when the health care
186 provider is unable to obtain the patient's consent due to the
187 patient's condition or the nature of the situation requiring
188 immediate medical attention. A health care provider who in good
189 faith releases or accesses an identifiable health record of a
190 patient in any form or medium under this section shall be immune
191 from civil liability for accessing or releasing an identifiable
192 health record.

193 (4) UNIVERSAL PATIENT AUTHORIZATION FORM.--

194 (a) By July 1, 2010, the agency shall develop forms in
195 both paper and electronic formats that may be used by a health
196 care provider to document patient authorization for the use or

HB 1097

2009

197 release, in any form or medium, of an identifiable health
198 record.

199 (b) The agency shall adopt by rule the authorization form
200 and accompanying instructions and make the authorization form
201 available on the agency's website, pursuant to s. 408.05.

202 (c) A health care provider receiving an authorization form
203 containing a request for the release of an identifiable health
204 record shall accept the form as a valid authorization to release
205 an identifiable health record. A health care provider may elect
206 to accept the authorization form in either electronic or paper
207 format or both. The individual or entity that submits the
208 authorization form containing a request for the release of an
209 identifiable health record shall determine which format is
210 accepted by the health care provider prior to submitting the
211 form.

212 (d) An individual or entity that submits a request for an
213 identifiable health record is not required under this section to
214 use the authorization form adopted and distributed by the
215 agency.

216 (e) The exchange by a health care provider of an
217 identifiable health record upon receipt of an authorization form
218 completed and submitted in accordance with agency instructions
219 creates a rebuttable presumption that the release of the
220 identifiable health record was appropriate. A health care
221 provider that releases an identifiable health record in reliance
222 on the information provided to the health care provider on a
223 properly completed authorization form does not violate any right
224 of confidentiality and is immune from liability under this

225 section.

226 (f) A health care provider that exchanges an identifiable
 227 health record upon receipt of an authorization form shall not be
 228 deemed to have violated or waived any privilege protected under
 229 the statutory or common law of this state.

230 (5) PENALTIES.--A person who does any of the following may
 231 be liable to the patient or a health care provider that has
 232 released an identifiable health record in reliance on an
 233 authorization form presented to the health care provider by the
 234 person for compensatory damages caused by an unauthorized
 235 release, plus reasonable attorney's fees and costs:

236 (a) Forges a signature on an authorization form or
 237 materially alters the authorization form of another person
 238 without the person's authorization; or

239 (b) Obtains an authorization form or an identifiable
 240 health record of another person under false pretenses.

241 Section 3. Section 408.0512, Florida Statutes, is created
 242 to read:

243 408.0512 Electronic medical records system adoption loan
 244 program.--

245 (1) Subject to a specific appropriation, the agency shall
 246 operate an electronic medical records system adoption loan
 247 program for the purpose of providing a one-time, no-interest
 248 loan to eligible physicians licensed under chapter 458 or
 249 chapter 459 or to an eligible business entity whose shareholders
 250 are licensed under chapter 458 or chapter 459 for the initial
 251 costs of implementing an electronic medical records system.

252 (2) In order to be eligible for a loan under this section,
253 each physician must demonstrate that he or she has practiced
254 continuously within the state for the previous 3 years.

255 (3) The agency may not provide a loan to a physician who
256 has or a business entity whose physician has:

257 (a) Been found guilty of a violation of s. 456.072(1) or
258 been disciplined under the applicable licensing chapter in the
259 previous 5 years.

260 (b) Been found guilty of or entered a plea of guilty or
261 nolo contendere to a violation of s. 409.920 or s. 409.9201.

262 (c) Been sanctioned pursuant to s. 409.913 for fraud or
263 abuse.

264 (4) A loan may be provided to an eligible physician or
265 business entity in a lump-sum amount to pay for the costs of
266 purchasing hardware and software, subscription services,
267 professional consultation, and staff training. The agency shall
268 provide guidance to loan recipients by providing, at a minimum,
269 a list of electronic medical records systems recognized or
270 certified by national standards-setting entities as capable of
271 being used to communicate with a health information exchange.

272 (5) The agency shall distribute a minimum of 25 percent of
273 funds appropriated to this program to physicians or business
274 entities operating within a rural county as defined in s.
275 288.106(1)(r).

276 (6) The agency shall, by rule, develop standard terms and
277 conditions for use in the loan program. At a minimum, these
278 terms and conditions shall require:

279 (a) Loan repayment by the physician or business entity

280 within a reasonable period of time, which may not be longer than
 281 72 months after the funding of the loan.

282 (b) Equal periodic payments that commence within 3 months
 283 after the funding of the loan.

284 (c) The eligible physician or business entity to execute a
 285 promissory note and a security agreement in favor of the state.
 286 The security agreement shall be a purchase-money security
 287 interest pledging as collateral for the loan the specific
 288 hardware and software purchased with the loan proceeds. The
 289 agency shall prepare and record a financing statement under
 290 chapter 679. The physician or business entity shall be
 291 responsible for paying the cost of recording the financing
 292 statement. The security agreement shall further require that the
 293 physician or business entity pay all collection costs, including
 294 attorney's fees.

295 (7) The agency shall further require the physician or
 296 business entity to provide additional security under one of the
 297 following paragraphs:

298 (a) An irrevocable letter of credit, as defined in chapter
 299 675, in an amount equal to the amount of the loan.

300 (b) An escrow account consisting of cash or assets
 301 eligible for deposit in accordance with s. 625.52 in an amount
 302 equal to the amount of the loan. If the escrow agent is
 303 responsible for making the periodic payments on the loan, the
 304 required escrow balance may be diminished as payments are made.

305 (c) A pledge of the accounts receivable of the physician
 306 or business entity. This pledge shall be reflected on the
 307 financing statement.

308 (8) All payments received from or on behalf of a physician
 309 or business entity under this program shall be deposited into
 310 the agency's Administrative Trust Fund to be used to fund new
 311 loans.

312 (9) If a physician or business entity that has received a
 313 loan under this section ceases to provide care or services to
 314 patients, or if the physician or business entity defaults in any
 315 payment and the default continues for 30 days, the entire loan
 316 balance shall be immediately due and payable and shall bear
 317 interest from that point forward at the rate of 18 percent
 318 annually. Upon default, the agency may offset any moneys owed to
 319 the physician or business entity from the state and apply the
 320 offset against the outstanding balance.

321 (10) If a physician defaults in any payment and if the
 322 default continues for 30 days, the default shall constitute
 323 grounds for disciplinary action under chapter 458 or chapter 459
 324 and under s. 456.072(1)(k).

325 Section 4. Subsection (2) of section 483.181, Florida
 326 Statutes, is amended to read:

327 483.181 Acceptance, collection, identification, and
 328 examination of specimens.--

329 (2) The results of a test must be reported directly to the
 330 licensed practitioner or other authorized person who requested
 331 it, and appropriate disclosure may be made by the clinical
 332 laboratory without a patient's consent to other health care
 333 practitioners and providers involved in the care or treatment of
 334 the patient as specified in s. 456.057(7)(a). The report must
 335 include the name and address of the clinical laboratory in which

HB 1097

2009

336 | the test was actually performed, unless the test was performed
337 | in a hospital laboratory and the report becomes an integral part
338 | of the hospital record.

339 | Section 5. This act shall take effect upon becoming a law.