

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 in order to facilitate the exchange of data
5 between certain health care facility personnel,
6 practitioners, and providers and attending physicians;
7 eliminating access to a patient's health records by the
8 State Long-Term Care Ombudsman Council and the local long-
9 term care ombudsman councils; creating s. 408.051, F.S.;
10 creating the "Florida Electronic Health Records Exchange
11 Act"; providing definitions; authorizing the release of
12 certain health records under emergency medical conditions
13 without the consent of the patient or the patient
14 representative; providing for immunity from civil
15 liability; providing duties of the Agency for Health Care
16 Administration with regard to the availability of
17 specified information on the agency's Internet website;
18 requiring the agency to develop and implement a universal
19 patient authorization form in paper and electronic formats
20 for the release of certain health records; providing
21 procedures for use of the form; providing penalties;
22 providing for certain compensation and attorney's fees and
23 costs; creating s. 408.0512, F.S.; authorizing the agency
24 to operate a certified electronic health records
25 technology loan fund, subject to specified donations and
26 specific appropriation; requiring the agency to adopt
27 rules related to standard terms and conditions for the
28 loan fund; amending s. 409.916, F.S.; requiring the agency

29 to deposit into the Grants and Donations Trust Fund
 30 private donations provided for the purpose of funding a
 31 certified electronic health records technology loan fund;
 32 creating s. 456.0393, F.S.; providing definitions;
 33 requiring physicians to provide confirmation of the
 34 meaningful use of electronic prescribing software in
 35 conjunction with licensure renewal commencing on a
 36 specified date; providing penalty for noncompliance;
 37 authorizing rule adoption; amending s. 483.181, F.S.;
 38 expanding access to laboratory reports in order to
 39 facilitate the exchange of data between certain health
 40 care practitioners and providers; providing an effective
 41 date.

42

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

44

45 Section 1. Subsection (4) of section 395.3025, Florida
 46 Statutes, is 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 currently
 55 involved in the care or treatment of the patient for use only in
 56 connection with the treatment of the patient.

CS/HB 1097

2009

57 (b) Licensed facility personnel only for administrative
58 purposes or risk management and quality assurance functions.

59 (c) The agency, for purposes of health care cost
60 containment.

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

65 (e) The agency upon subpoena issued pursuant to s.
66 456.071, but the records obtained thereby must be used solely
67 for the purpose of the agency and the appropriate professional
68 board in its investigation, prosecution, and appeal of
69 disciplinary proceedings. If the agency requests copies of the
70 records, the facility shall charge no more than its actual
71 copying costs, including reasonable staff time. The records must
72 be sealed and must not be available to the public pursuant to s.
73 119.07(1) or any other statute providing access to records, nor
74 may they be available to the public as part of the record of
75 investigation for and prosecution in disciplinary proceedings
76 made available to the public by the agency or the appropriate
77 regulatory board. However, the agency must make available, upon
78 written request by a practitioner against whom probable cause
79 has been found, any such records that form the basis of the
80 determination of probable cause.

81 (f) The Department of Health or its agent, for the purpose
82 of establishing and maintaining a trauma registry and for the
83 purpose of ensuring that hospitals and trauma centers are in
84 compliance with the standards and rules established under ss.

85 395.401, 395.4015, 395.4025, 395.404, 395.4045, and 395.405, and
 86 for the purpose of monitoring patient outcome at hospitals and
 87 trauma centers that provide trauma care services.

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

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

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

108 (i)~~(j)~~ Organ procurement organizations, tissue banks, and
 109 eye banks required to conduct death records reviews pursuant to
 110 s. 395.2050.

111 (j)~~(k)~~ The Medicaid Fraud Control Unit in the Department
 112 of Legal Affairs pursuant to s. 409.920.

113 (k)~~(l)~~ The Department of Financial Services, or an agent,
 114 employee, or independent contractor of the department who is
 115 auditing for unclaimed property pursuant to chapter 717.

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

122 Section 2. Section 408.051, Florida Statutes, is created
 123 to read:

124 408.051 Florida Electronic Health Records Exchange Act.--

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

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

128 (a) "Electronic health record" means a record of a
 129 person's medical treatment that is created by a licensed health
 130 care provider and stored in an interoperable and accessible
 131 digital format.

132 (b) "Qualified electronic health record" means an
 133 electronic record of health-related information on an individual
 134 that:

135 1. Includes patient demographic and clinical health
 136 information, such as medical history and problem lists; and

137 2. Has the capacity to:

138 a. Provide clinical decision support;

139 b. Support physician order entry;

140 c. Capture and query information relevant to health care

141 quality; and

142 d. Exchange electronic health information with, and
143 integrate such information from, other sources.

144 (c) "Certified electronic health records technology" means
145 a qualified electronic health record that is certified pursuant
146 to s. 3001(c) (5) of the Public Health Service Act as meeting
147 standards adopted under s. 3004 of such act that are applicable
148 to the type of record involved, such as an ambulatory electronic
149 health record for office-based physicians or an inpatient
150 hospital electronic health record for hospitals.

151 (d) "Health record" means any information, recorded in any
152 form or medium, which relates to the past, present, or future
153 health of an individual for the primary purpose of providing
154 health care and health-related services.

155 (e) "Identifiable health record" means any health record
156 that identifies the patient or with respect to which there is a
157 reasonable basis to believe the information can be used to
158 identify the patient.

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

162 (g) "Patient representative" means a parent of a minor
163 patient, a court-appointed guardian for the patient, a health
164 care surrogate, or a person holding a power of attorney or
165 notarized consent appropriately executed by the patient granting
166 permission to a health care facility or health care provider to
167 disclose the patient's health care information to that person.
168 In the case of a deceased patient, the term also means the

CS/HB 1097

2009

169 personal representative of the estate of the deceased patient;
170 the deceased patient's surviving spouse or surviving parent, or
171 the minor child of the deceased patient; the attorney for the
172 patient's surviving spouse, parent, or adult child; or the
173 attorney for the parent or guardian of a surviving minor child.

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

187 (4) UNIVERSAL PATIENT AUTHORIZATION FORM.--

188 (a) By July 1, 2010, the agency shall develop forms in
189 both paper and electronic formats which may be used by a health
190 care provider to document patient authorization for the use or
191 release, in any form or medium, of an identifiable health
192 record.

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

196 (c) A health care provider receiving an authorization form

197 containing a request for the release of an identifiable health
198 record shall accept the form as a valid authorization to release
199 an identifiable health record. A health care provider may elect
200 to accept the authorization form in either electronic or paper
201 format or both. The individual or entity that submits the
202 authorization form containing a request for the release of an
203 identifiable health record shall determine which format is
204 accepted by the health care provider prior to submitting the
205 form.

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

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

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

224 (5) PENALTIES.--A person who does any of the following may

225 be liable to the patient or a health care provider that has
 226 released an identifiable health record in reliance on an
 227 authorization form presented to the health care provider by the
 228 person for compensatory damages caused by an unauthorized
 229 release, plus reasonable attorney's fees and costs:

230 (a) Forges a signature on an authorization form or
 231 materially alters the authorization form of another person
 232 without the person's authorization; or

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

235 Section 3. Section 408.0512, Florida Statutes, is created
 236 to read:

237 408.0512 Certified electronic health records technology
 238 loan fund.--

239 (1) The agency may operate a certified electronic health
 240 records technology loan fund subject to the availability of
 241 eligible donations from public or private entities and funding
 242 made available through s. 3014 of the Public Health Services Act
 243 and subject to a specific appropriation as authorized by the
 244 General Appropriations Act or as provided through the provisions
 245 of s. 216.181(11)(a) and (b).

246 (2) The agency shall adopt rules related to standard terms
 247 and conditions for use in the loan fund.

248 Section 4. Subsection (1) of section 409.916, Florida
 249 Statutes, is amended to read:

250 409.916 Grants and Donations Trust Fund.--

251 (1)(a) The agency shall deposit any funds received from
 252 pharmaceutical manufacturers and all other funds received by the

CS/HB 1097

2009

253 agency from any other person as the result of a Medicaid cost
254 containment strategy, in the nature of a rebate, grant, or other
255 similar mechanism into the Grants and Donations Trust Fund.

256 (b) The agency shall deposit any funds received from
257 private donations for the purpose of funding a certified
258 electronic health records technology loan fund into the Grants
259 and Donations Trust Fund.

260 Section 5. Section 456.0393, Florida Statutes, is created
261 to read:

262 456.0393 Electronic prescribing; information required for
263 licensure renewal.--

264 (1) As used in this section, the term:

265 (a) "Electronic prescribing" has the same meaning as
266 provided in s. 408.0611.

267 (b) "Meaningful use" means the electronic prescribing of
268 at least 50 percent of prescriptions written by a physician.

269 (2) Effective January 1, 2012, each physician who applies
270 for license renewal under chapter 458 or chapter 459, except a
271 person registered pursuant to s. 458.345 or s. 459.021, must, in
272 conjunction with the renewal of such license, submit
273 confirmation, on a form approved by the board, of the meaningful
274 use of electronic prescribing software during the current
275 licensure cycle.

276 (3) Failure to comply with the requirements of this
277 section shall constitute grounds for disciplinary action under
278 chapter 458 or chapter 459 and under s. 456.072 (1) (k).

279 (4) The Board of Medicine and the Board of Osteopathic
280 Medicine may adopt rules to carry out the provisions of this

CS/HB 1097

2009

281 section.

282 Section 6. Subsection (2) of section 483.181, Florida
283 Statutes, is amended to read:

284 483.181 Acceptance, collection, identification, and
285 examination of specimens.--

286 (2) The results of a test must be reported directly to the
287 licensed practitioner or other authorized person who requested
288 it, and appropriate disclosure may be made by the clinical
289 laboratory without a patient's consent to other health care
290 practitioners and providers involved in the care or treatment of
291 the patient as specified in s. 456.057(7) (a). The report must
292 include the name and address of the clinical laboratory in which
293 the test was actually performed, unless the test was performed
294 in a hospital laboratory and the report becomes an integral part
295 of the hospital record.

296 Section 7. This act shall take effect upon becoming a law.