

By Senator Ring

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1 A bill to be entitled
2 An act relating to electronic health records; amending
3 s. 395.3025, F.S.; expanding access to a patient's
4 medical records to facilitate the electronic exchange
5 of data between certain health care facilities,
6 practitioners, and providers and attending physicians;
7 revising terminology regarding disclosure of patient
8 records to conform to changes made by the act;
9 amending s. 408.05, F.S.; removing responsibility of
10 the Agency for Health Care Administration for
11 monitoring certain grants and health care data;
12 creating s. 408.051, F.S.; creating the "Florida
13 eHealth Initiative Act"; providing legislative intent;
14 providing definitions; requiring the agency to award
15 and monitor grants to certain health information
16 organizations; providing rulemaking authority
17 regarding the establishment of eligibility criteria;
18 authorizing the agency to operate an Electronic
19 Medical Records System Adoption Loan Program, subject
20 to a specific appropriation; providing eligibility
21 criteria; providing rulemaking authority regarding
22 terms and conditions for the granting of loans;
23 creating the Florida Health Information Exchange
24 Advisory Council; providing for purpose, membership,
25 terms of office, and duties of the council; requiring
26 the council to consult with certain experts regarding
27 the use of health information in medical research to
28 conform with provisions in the Health Insurance
29 Portability and Accountability Act; requiring the

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30 Florida Center for Health Information and Policy
31 Analysis to provide staff support; requiring reports
32 to the Governor and Legislature; providing for future
33 abolition of the council; providing duties of the
34 agency with regard to the availability of specified
35 information on the agency's Internet website;
36 requiring the agency to develop and implement a plan
37 to promote participation in regional and statewide
38 health information exchanges; requiring the Office of
39 Program Policy Analysis and Government Accountability
40 to complete an independent evaluation of the grants
41 program administered by the agency and submit the
42 report to the Governor and Legislature; repealing s.
43 408.062(5), F.S., relating to the removal of the
44 agency's responsibility for developing an electronic
45 health information network; amending s. 483.181, F.S.;
46 expanding access to laboratory reports to facilitate
47 the exchange of data between certain health care
48 practitioners and providers; providing an effective
49 date.

50

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

52

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

55 395.3025 Patient and personnel records; copies;
56 examination.-

57 (4) Patient records are confidential and must not be
58 disclosed without the consent of the patient or his or her legal

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59 representative person to whom they pertain, but appropriate
60 disclosure may be made without such consent to:

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

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

67 (c) The agency, for purposes of health care cost
68 containment.

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

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

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88 such records that form the basis of the determination of
89 probable cause.

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

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

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

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

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

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

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

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

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

133 408.05 Florida Center for Health Information and Policy
134 Analysis.—

135 (4) TECHNICAL ASSISTANCE.—

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

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

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146 necessary to facilitate the use of the center's data. To the
147 extent possible, the center should provide current data timely
148 in response to requests from public or private agencies.

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

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

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

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

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

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

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

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

174 ~~(b) The agency shall administer, manage, and monitor grants~~

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175 ~~to not-for-profit organizations, regional health information~~
176 ~~organizations, public health departments, or state agencies that~~
177 ~~submit proposals for planning, implementation, or training~~
178 ~~projects to advance the development of a health information~~
179 ~~network. Any grant contract shall be evaluated to ensure the~~
180 ~~effective outcome of the health information project.~~

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

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

188 408.051 Florida eHealth Initiative Act.-

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

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

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

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

203 (b) "Electronic medical records system" means an

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

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

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

225 (4) MATCHING GRANTS.—

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

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233 support or services. Grants may be awarded within the following
234 categories: development, operation, and collaboration.

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

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

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

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

261 (c) Beginning July 1, 2009, 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
271 loan to eligible physicians licensed under chapter 458 or
272 chapter 459 or to an eligible business entity whose shareholders
273 are licensed under chapter 458 or chapter 459 for the initial
274 costs of implementing an electronic medical records system.

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

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

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

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

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

288 (d) A loan may be provided to an eligible physician or
289 business entity in a lump-sum amount to pay for the costs of
290 purchasing hardware and software, subscription services,

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291 professional consultation, and staff training. The agency shall
292 provide guidance to loan recipients by providing, at a minimum,
293 a list of electronic medical records systems recognized or
294 certified by national standards-setting entities as capable of
295 being used to communicate with a health information exchange.

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

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

303 1. Loan repayment by the physician or business entity
304 within a reasonable period, which may not be longer than 72
305 months after the funding of the loan.

306 2. Equal periodic payments that commence within 3 months
307 after the funding of the loan.

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

318 (g) The agency shall further require the physician or
319 business entity to provide additional security under one of the

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320 following subparagraphs:

321 1. An irrevocable letter of credit, as defined in chapter
322 675, in an amount equal to the amount of the loan.

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

328 3. A pledge of the accounts receivables of the physician or
329 business entity. This pledge shall be reflected on the financing
330 statement.

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

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

344 (j) If a physician defaults in any payment and if the
345 default continues for 30 days, the default constitutes grounds
346 for disciplinary action under chapter 458 or chapter 459 and s.
347 456.072 (1) (k) .

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

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

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

355 1. Promote participation in regional and statewide health
356 information exchanges and the adoption of health information
357 technology to support the infrastructure capacity for regional
358 and statewide health information exchanges.

359 2. Conduct outreach and convene forums to educate
360 stakeholders regarding the benefits of using a health
361 information exchange.

362 3. Provide guidance to stakeholders regarding the effective
363 use of health information exchanges and standards for protecting
364 the privacy and security of electronic medical records.

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

366 1. The Secretary of Health Care Administration, or his or
367 her designee.

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

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

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

372 b. One member must be a consumer who is a resident of the
373 state.

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

376 a. One member must be from a hospital that uses an
377 electronic medical records system.

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378 b. One member must be a physician who uses an electronic
379 medical records system in his or her practice.

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

382 d. One member must be from a federally qualified health
383 center or other rural health organization that uses an
384 electronic medical records system.

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

387 a. One member must be from a hospital that uses an
388 electronic medical records system.

389 b. One member must be a physician who uses an electronic
390 medical records system in his or her practice.

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

393 d. One member must be from a federally qualified health
394 center or other rural health organization that uses an
395 electronic medical records system.

396 (d) A member who is a representative of an operating health
397 information organization in the state must recuse himself or
398 herself during discussion, evaluation, or recommendation of a
399 grant application.

400 (e) Each member of the council subject to appointment shall
401 be appointed to serve for a term of 4 years following the date
402 of appointment. A vacancy shall be filled by appointment for the
403 remainder of the term. Appointments shall be made within 45 days
404 after the effective date of this section.

405 (f) The council may meet at the call of the chair or at the
406 request of a majority of its membership, but the council must

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407 meet at least quarterly. Meetings of the council may be held via
408 teleconference or other electronic means.

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

410 (h) A majority of the members constitutes a quorum and the
411 affirmative vote of a majority of a quorum is necessary to take
412 action.

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

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

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

423 3. Remove barriers that prevent consumers from having
424 access to their electronic medical records.

425 4. Provide incentives to promote participation by health
426 care providers, health care facilities, and health insurers in
427 health information exchanges.

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

432 6. Increase state agency participation in health
433 information exchanges.

434 7. Enter into partnerships with other state, regional, and
435 federal entities in order to promote and coordinate health-

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436 information-exchange efforts.

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

439
440 The council shall establish ad hoc issue-oriented technical
441 workgroups on an as-needed basis to make recommendations to the
442 council. The council shall consult with experts in the use of
443 health information in medical research to ensure that all
444 recommendations are consistent with the Health Insurance
445 Portability and Accountability Act of 1996, Pub. L. No. 104-199,
446 42 U.S.C. ss. 1301 et seq., and take into account the legitimate
447 uses of health information for medical research, drug
448 development, clinical trials, postapproval surveillance, and
449 public health and public agency reporting requirements.

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

454 (k) Beginning July 1, 2010, the council shall annually
455 provide a report to the Governor, the President of the Senate,
456 the Speaker of the House of Representatives, and the chairs of
457 the appropriate substantive committees of the Senate and the
458 House of Representatives which includes, but is not limited to,
459 the recommendations regarding the council's duties and
460 responsibilities. In addition, by July 1, 2011, the council
461 shall recommend a long-term plan to create an interoperable
462 statewide network of health information organizations to the
463 Governor, the President of the Senate, the Speaker of the House
464 of Representatives, and the chairs of the appropriate

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465 substantive committees of the Senate and the House of
466 Representatives.

467 (1) This subsection is repealed and the council shall stand
468 abolished July 1, 2013, unless reviewed and saved from repeal
469 through reenactment by the Legislature.

470 (7) AGENCY FOR HEALTH CARE ADMINISTRATION; DUTIES.—

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

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

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

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

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

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494 which grant dollars are spent; the level of participation by
495 entities within each grantee's project; the extent of clinical
496 data exchange among entities within each grantee's project; the
497 sources of funding for each grantee; and the feasibility of each
498 grantee achieving long-term sustainability without state grant
499 funding. The evaluation must assess the level at which the
500 current grants program is advancing the development of a
501 statewide health information exchange and recommend other
502 programs that may accomplish the same goal. The report shall be
503 submitted to the Governor, the President of the Senate, the
504 Speaker of the House of Representatives, and the chairs of the
505 relevant committees in the Senate and the House of
506 Representatives by July 1, 2010.

507 Section 4. Subsection (5) of section 408.062, Florida
508 Statutes, is repealed.

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

511 483.181 Acceptance, collection, identification, and
512 examination of specimens.—

513 (2) The results of a test must be reported directly to the
514 licensed practitioner or other authorized person who requested
515 it, and appropriate disclosure may be made by the clinical
516 laboratory without a patient's consent to other health care
517 practitioners and providers involved in the care or treatment of
518 the patient for use in connection with the treatment of the
519 patient. The report must include the name and address of the
520 clinical laboratory in which the test was actually performed,
521 unless the test was performed in a hospital laboratory and the
522 report becomes an integral part of the hospital record.

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