

By the Committee on Health Regulation; and 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           health records in order to facilitate the exchange of  
5           data 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 the  
11          consent of the patient or the patient representative;  
12          providing for immunity from civil liability; providing  
13          duties of the Agency for Health Care Administration  
14          with regard to the availability of specified  
15          information on the agency's Internet website;  
16          requiring the agency to develop and implement a  
17          universal patient authorization form in paper and  
18          electronic formats for the release of certain health  
19          records; providing procedures for use of the form;  
20          providing penalties; providing for certain  
21          compensation and attorney's fees and costs; creating  
22          s. 408.0512, F.S.; requiring the Agency for Health  
23          Care Administration to operate an electronic medical  
24          records system adoption loan program, subject to  
25          specific appropriation; specifying the uses of the  
26          loan; requiring the agency to adopt rules related to  
27          standard terms and conditions for the loan program;  
28          amending s. 483.181, F.S.; expanding access to  
29          laboratory reports in order to facilitate the exchange

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30 of data between certain health care practitioners and  
31 providers; providing an effective date.

32  
33 WHEREAS, the use of electronic health information  
34 technology has been proven to benefit consumers by increasing  
35 the quality and efficiency of health care delivery throughout  
36 the state, and

37 WHEREAS, clear and concise standards for sharing privacy-  
38 protected medical information among authorized health care  
39 providers will enable providers to have cost-effective access to  
40 the medical information needed to make sound decisions about  
41 health care, and

42 WHEREAS, maintaining the privacy and security of  
43 identifiable health records is essential to the adoption of  
44 procedures for sharing of electronic health records among health  
45 care providers involved in the treatment of patients, NOW,  
46 THEREFORE,

47  
48 Be It Enacted by the Legislature of the State of Florida:

49  
50 Section 1. Subsection (4) of section 395.3025, Florida  
51 Statutes, is amended to read:

52 395.3025 Patient and personnel records; copies;  
53 examination.—

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

58 (a) Licensed facility personnel, and ~~and~~ attending physicians,

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59 or other health care practitioners and providers currently  
60 involved in the care or treatment of the patient for use only in  
61 connection with the treatment of the patient.

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

64 (c) The agency, for purposes of health care cost  
65 containment.

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

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

86 (f) The Department of Health or its agent, for the purpose  
87 of establishing and maintaining a trauma registry and for the

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88 purpose of ensuring that hospitals and trauma centers are in  
89 compliance with the standards and rules established under ss.  
90 395.401, 395.4015, 395.4025, 395.404, 395.4045, and 395.405, and  
91 for the purpose of monitoring patient outcome at hospitals and  
92 trauma centers that provide trauma care services.

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

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

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

113 (j) Organ procurement organizations, tissue banks, and eye  
114 banks required to conduct death records reviews pursuant to s.  
115 395.2050.

116 (k) The Medicaid Fraud Control Unit in the Department of

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117 Legal Affairs pursuant to s. 409.920.

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

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

127 Section 2. Section 408.051, Florida Statutes, is created to  
128 read:

129 408.051 Florida Electronic Health Records Exchange Act.—

130 (1) SHORT TITLE.—This section may be cited as the “Florida  
131 Electronic Health Records Exchange Act.”

132 (2) DEFINITIONS.—As used in this section, the term:

133 (a) “Electronic health record” means a record of a person’s  
134 medical treatment which is created by a licensed health care  
135 provider and stored in an interoperable and accessible digital  
136 format.

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

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146       (c) "Health information exchange" means an electronic  
147 health records system used to acquire, process, and transmit  
148 electronic health records that can be shared in real time among  
149 authorized health care providers, health care facilities, health  
150 insurers, and other recipients, as authorized by law, to  
151 facilitate the provision of health care services.

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

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

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

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

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

188 (4) UNIVERSAL PATIENT AUTHORIZATION FORM.—

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

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

197 (c) A health care provider receiving an authorization form  
198 containing a request for the release of an identifiable health  
199 record shall accept the form as a valid authorization to release  
200 an identifiable health record. A health care provider may elect  
201 to accept the authorization form in either electronic or paper  
202 format or both. The individual or entity that submits the  
203 authorization form containing a request for the release of an

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204 identifiable health record shall determine which format is  
205 accepted by the health care provider prior to submitting the  
206 form.

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

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

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

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

231 (a) Forges a signature on an authorization form or  
232 materially alters the authorization form of another person



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233 without the person's authorization; or

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

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

238 408.0512 Electronic health records system adoption loan  
239 program.—

240 (1) Subject to a specific appropriation and the  
241 availability of funding made available through s. 3014 of the  
242 Public Health Services Act, the agency shall operate an  
243 electronic health records system adoption loan program to:

244 (a) Facilitate the purchase of certified electronic health  
245 record technology;

246 (b) Enhance the use of certified electronic health record  
247 technology, which may include costs associated with upgrading  
248 health information technology so that it meets criteria  
249 necessary for certified electronic health record technology;

250 (c) Train personnel in the use of such technology; or

251 (d) Improve the secure electronic exchange of health  
252 information.

253 (2) The agency shall adopt rules related to standard terms  
254 and conditions for use in the loan program.

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

257 483.181 Acceptance, collection, identification, and  
258 examination of specimens.—

259 (2) The results of a test must be reported directly to the  
260 licensed practitioner or other authorized person who requested  
261 it, and appropriate disclosure may be made by the clinical

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262 laboratory without a patient's consent to other health care  
263 practitioners and providers involved in the care or treatment of  
264 the patient as specified in s. 456.057(7)(a). The report must  
265 include the name and address of the clinical laboratory in which  
266 the test was actually performed, unless the test was performed  
267 in a hospital laboratory and the report becomes an integral part  
268 of the hospital record.

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