

By the Committees on Governmental Oversight and Accountability;
and 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 health
24 record technology loan fund, subject to a specific
25 appropriation; requiring the agency to adopt rules
26 related to standard terms and conditions for the loan
27 program; amending s. 409.916, F.S.; requiring that the
28 agency deposit into the Grants and Donations Trust
29 Fund private donations provided for the purpose of

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30 funding a certified electronic health record
31 technology loan fund; amending s. 483.181, F.S.;
32 expanding access to laboratory reports in order to
33 facilitate the exchange of data between certain health
34 care practitioners and providers; providing an
35 effective date.

36
37 WHEREAS, the use of electronic health information
38 technology has been proven to benefit consumers by increasing
39 the quality and efficiency of health care delivery throughout
40 the state, and

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

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

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

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

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

58 (4) Patient records are confidential and must not be

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59 disclosed without the consent of the patient or his or her legal
60 representative ~~person to whom they pertain~~, but appropriate
61 disclosure may be made without such consent to:

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

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

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

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

74 (e) The agency upon subpoena issued pursuant to s. 456.071,
75 but the records obtained thereby must be used solely for the
76 purpose of the agency and the appropriate professional board in
77 its investigation, prosecution, and appeal of disciplinary
78 proceedings. If the agency requests copies of the records, the
79 facility shall charge no more than its actual copying costs,
80 including reasonable staff time. The records must be sealed and
81 must not be available to the public pursuant to s. 119.07(1) or
82 any other statute providing access to records, nor may they be
83 available to the public as part of the record of investigation
84 for and prosecution in disciplinary proceedings made available
85 to the public by the agency or the appropriate regulatory board.
86 However, the agency must make available, upon written request by
87 a 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. Section 408.051, Florida Statutes, is created to
132 read:

133 408.051 Florida Electronic Health Records Exchange Act.—

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

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

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

141 (b) "Qualified electronic health record" means an
142 electronic record of health-related information concerning an
143 individual which includes patient demographic and clinical
144 health information, such as medical history and problem lists,
145 and which has the capacity to provide clinical decision support,

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146 to support physician order entry, to capture and query
147 information relevant to health care quality, and to exchange
148 electronic health information with, and integrate such
149 information from, other sources.

150 (c) "Certified electronic health record technology" means a
151 qualified electronic health record that is certified pursuant to
152 s. 3001(c)(5) of the Public Health Service Act as meeting
153 standards adopted under s. 3004 of such act which are applicable
154 to the type of record involved, such as an ambulatory electronic
155 health record for office-based physicians or an inpatient
156 hospital electronic health record for hospitals.

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

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

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

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

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175 personal representative of the estate of the deceased patient;
176 the deceased patient's surviving spouse, surviving parent, or
177 surviving adult child; the parent or guardian of a surviving
178 minor child of the deceased patient; the attorney for the
179 patient's surviving spouse, parent, or adult child; or the
180 attorney for the parent or guardian of a surviving minor child.

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 or the
187 consent of the patient representative due to the patient's
188 condition or the nature of the situation requiring immediate
189 medical attention. A health care provider who in good faith
190 releases or accesses an identifiable health record of a patient
191 in any form or medium under this section is immune from civil
192 liability for accessing or releasing an identifiable health
193 record.

194 (4) UNIVERSAL PATIENT AUTHORIZATION FORM.—

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

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

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

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

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

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

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

231 (5) PENALTIES.—A person who does any of the following may
232 be liable to the patient or a health care provider that has

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233 released an identifiable health record in reliance on an
234 authorization form presented to the health care provider by the
235 person for compensatory damages caused by an unauthorized
236 release, plus reasonable attorney's fees and costs:

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

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

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

244 408.0512 Electronic health records system adoption loan
245 program.—

246 (1) Subject to the availability of eligible donations from
247 public or private entities and funding made available through s.
248 3014 of the Public Health Service Act, the agency may operate a
249 certified electronic health record technology loan fund subject
250 to a specific appropriation as authorized by the General
251 Appropriations Act or as provided through the provisions of s.
252 216.181(11) (a) and (b).

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

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

257 409.916 Grants and Donations Trust Fund.—

258 (1) The agency shall deposit any funds received from
259 pharmaceutical manufacturers and all other funds received by the
260 agency from any other person as the result of a Medicaid cost
261 containment strategy, in the nature of a rebate, grant, or other

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262 similar mechanism into the Grants and Donations Trust Fund. The
263 agency shall deposit any funds received from private donations
264 for the purpose of funding a certified electronic health record
265 technology loan fund into the Grants and Donations Trust Fund.

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

268 483.181 Acceptance, collection, identification, and
269 examination of specimens.—

270 (2) The results of a test must be reported directly to the
271 licensed practitioner or other authorized person who requested
272 it, and appropriate disclosure may be made by the clinical
273 laboratory without a patient's consent to other health care
274 practitioners and providers involved in the care or treatment of
275 the patient as specified in s. 456.057(7)(a). The report must
276 include the name and address of the clinical laboratory in which
277 the test was actually performed, unless the test was performed
278 in a hospital laboratory and the report becomes an integral part
279 of the hospital record.

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