

2009162er

1
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 deleting the exemption that allows long-term ombudsman
8 councils to have access to certain nursing home
9 patient records; creating s. 408.051, F.S.; creating
10 the "Florida Electronic Health Records Exchange Act";
11 providing definitions; authorizing the release of
12 certain health records under emergency medical
13 conditions without the consent of the patient or the
14 patient representative; providing for immunity from
15 civil liability; providing duties of the Agency for
16 Health Care Administration with regard to the
17 availability of specified information on the agency's
18 Internet website; requiring the agency to develop and
19 implement a universal patient authorization form in
20 paper and electronic formats for the release of
21 certain health records; providing procedures for use
22 of the form; providing penalties; providing for
23 certain compensation and attorney's fees and costs;
24 creating s. 408.0512, F.S.; requiring the Agency for
25 Health Care Administration to operate an electronic
26 health record technology loan fund, subject to a
27 specific appropriation; requiring the agency to adopt
28 rules related to standard terms and conditions for the
29 loan program; amending s. 409.916, F.S.; requiring

2009162er

30 that the agency deposit into the Grants and Donations
31 Trust Fund private donations provided for the purpose
32 of funding a certified electronic health record
33 technology loan fund; amending s. 483.181, F.S.;
34 expanding access to laboratory reports in order to
35 facilitate the exchange of data between certain health
36 care practitioners and providers; providing an
37 effective date.

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

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

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

53
54 Be It Enacted by the Legislature of the State of Florida:

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

58 395.3025 Patient and personnel records; copies;

2009162er

59 examination.—

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

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

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

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

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

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

2009162er

88 However, the agency must make available, upon written request by
89 a practitioner against whom probable cause has been found, any
90 such records that form the basis of the determination of
91 probable cause.

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

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

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

112 (h)-(i) A local trauma agency or a regional trauma agency
113 that performs quality assurance activities, ~~or~~ a panel or
114 committee assembled to assist a local trauma agency, or a
115 regional trauma agency ~~in~~ performing quality assurance
116 activities. Patient records obtained under this paragraph are

2009162er

117 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
118 of the State Constitution.

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

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

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

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

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

135 408.051 Florida Electronic Health Records Exchange Act.—

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

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

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

143 (b) "Qualified electronic health record" means an
144 electronic record of health-related information concerning an
145 individual which includes patient demographic and clinical

2009162er

146 health information, such as medical history and problem lists,
147 and which has the capacity to provide clinical decision support,
148 to support physician order entry, to capture and query
149 information relevant to health care quality, and to exchange
150 electronic health information with, and integrate such
151 information from, other sources.

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

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

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

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

170 (g) "Patient representative" means a parent of a minor
171 patient, a court-appointed guardian for the patient, a health
172 care surrogate, or a person holding a power of attorney or
173 notarized consent appropriately executed by the patient granting
174 permission to a health care facility or health care provider to

2009162er

175 disclose the patient's health care information to that person.
176 In the case of a deceased patient, the term also means the
177 personal representative of the estate of the deceased patient;
178 the deceased patient's surviving spouse, surviving parent, or
179 surviving adult child; the parent or guardian of a surviving
180 minor child of the deceased patient; the attorney for the
181 patient's surviving spouse, parent, or adult child; or the
182 attorney for the parent or guardian of a surviving minor child.

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

196 (4) UNIVERSAL PATIENT AUTHORIZATION FORM.—

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

202 (b) The agency shall adopt by rule the authorization form
203 and accompanying instructions and make the authorization form

2009162er

204 available on the agency's website, pursuant to s. 408.05.

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

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

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

230 (f) A health care provider that exchanges an identifiable
231 health record upon receipt of an authorization form shall not be
232 deemed to have violated or waived any privilege protected under

2009162er

233 the statutory or common law of this state.

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

240 (a) Forges a signature on an authorization form or
241 materially alters the authorization form of another person
242 without the person's authorization; or

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

245 Section 3. Section 408.0512, Florida Statutes, is created
246 to read:

247 408.0512 Electronic health records system adoption loan
248 program.—

249 (1) Subject to the availability of eligible donations from
250 public or private entities and funding made available through s.
251 3014 of the Public Health Service Act, the agency may operate a
252 certified electronic health record technology loan fund subject
253 to a specific appropriation as authorized by the General
254 Appropriations Act or as provided through the provisions of s.
255 216.181(11) (a) and (b).

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

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

260 409.916 Grants and Donations Trust Fund.—

261 (1) The agency shall deposit any funds received from

2009162er

262 pharmaceutical manufacturers and all other funds received by the
263 agency from any other person as the result of a Medicaid cost
264 containment strategy, in the nature of a rebate, grant, or other
265 similar mechanism into the Grants and Donations Trust Fund. The
266 agency shall deposit any funds received from private donations
267 for the purpose of funding a certified electronic health record
268 technology loan fund into the Grants and Donations Trust Fund.

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

271 483.181 Acceptance, collection, identification, and
272 examination of specimens.—

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

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