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LEGISLATIVE ACTION

Senate

House

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Floor: 1/F/2R

04/28/2011 02:14 PM

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Senator Bogdanoff moved the following:

**Senate Amendment (with title amendment)**

Between lines 417 and 418

insert:

Section 3. Paragraph (a) of subsection (9) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished.—

(9) (a) 1. The department may obtain patient records pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed



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14 any controlled substance specified in chapter 893 in violation  
15 of this chapter or any professional practice act or that a  
16 health care practitioner has practiced his or her profession  
17 below that level of care, skill, and treatment required as  
18 defined by this chapter or any professional practice act and  
19 also find that appropriate, reasonable attempts were made to  
20 obtain a patient release. Notwithstanding the foregoing, the  
21 department need not attempt to obtain a patient release when  
22 investigating an offense involving the inappropriate  
23 prescribing, overprescribing, or diversion of controlled  
24 substances and the offense involves a pain-management clinic.  
25 The department may obtain patient records pursuant to a subpoena  
26 and without patient authorization or notification to the patient  
27 ~~subpoena~~ from any pain-management clinic required to be licensed  
28 if the department has probable cause to believe that a violation  
29 of any provision of s. 458.3265 or s. 459.0137 is occurring or  
30 has occurred and reasonably believes that obtaining such patient  
31 authorization is not feasible due to the volume of the  
32 dispensing and prescribing activity involving controlled  
33 substances and that obtaining patient authorization ~~or the~~  
34 ~~issuance of a subpoena~~ would jeopardize the investigation.

35 2. The department may obtain patient records and insurance  
36 information pursuant to a subpoena without written authorization  
37 from the patient if the department and the probable cause panel  
38 of the appropriate board, if any, find reasonable cause to  
39 believe that a health care practitioner has provided inadequate  
40 medical care based on termination of insurance and also find  
41 that appropriate, reasonable attempts were made to obtain a  
42 patient release.



43           3. The department may obtain patient records, billing  
44 records, insurance information, provider contracts, and all  
45 attachments thereto pursuant to a subpoena without written  
46 authorization from the patient if the department and probable  
47 cause panel of the appropriate board, if any, find reasonable  
48 cause to believe that a health care practitioner has submitted a  
49 claim, statement, or bill using a billing code that would result  
50 in payment greater in amount than would be paid using a billing  
51 code that accurately describes the services performed, requested  
52 payment for services that were not performed by that health care  
53 practitioner, used information derived from a written report of  
54 an automobile accident generated pursuant to chapter 316 to  
55 solicit or obtain patients personally or through an agent  
56 regardless of whether the information is derived directly from  
57 the report or a summary of that report or from another person,  
58 solicited patients fraudulently, received a kickback as defined  
59 in s. 456.054, violated the patient brokering provisions of s.  
60 817.505, or presented or caused to be presented a false or  
61 fraudulent insurance claim within the meaning of s.  
62 817.234(1)(a), and also find that, within the meaning of s.  
63 817.234(1)(a), patient authorization cannot be obtained because  
64 the patient cannot be located or is deceased, incapacitated, or  
65 suspected of being a participant in the fraud or scheme, and if  
66 the subpoena is issued for specific and relevant records.

67           4. Notwithstanding subparagraphs 1.-3., when the department  
68 investigates a professional liability claim or undertakes action  
69 pursuant to s. 456.049 or s. 627.912, the department may obtain  
70 patient records pursuant to a subpoena without written  
71 authorization from the patient if the patient refuses to



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72 cooperate or if the department attempts to obtain a patient  
73 release and the failure to obtain the patient records would be  
74 detrimental to the investigation.

75

76 ===== T I T L E A M E N D M E N T =====

77 And the title is amended as follows:

78 Delete line 16

79 and insert:

80 Health to adopt rules; amending s. 456.057, F.S.;

81 authorizing the Department of Health to obtain patient

82 records pursuant to a subpoena and without

83 notification to the patient from a pain-management

84 clinic under certain circumstances; amending s.

85 458.305, F.S.;