

By Senator Storms

10-00624-12

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1 A bill to be entitled
2 An act relating to medical care; amending s. 395.3025,
3 F.S.; providing powers of the Department of Health
4 with regard to access to patient health records;
5 amending s. 456.057, F.S.; providing for the
6 department to obtain patient records without written
7 authorization from the patient under certain
8 circumstances; amending s. 456.074, F.S.; authorizing
9 the department to issue an emergency order to suspend
10 or restrict the license of a health care practitioner
11 under certain circumstances; providing an effective
12 date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Paragraph (e) of subsection (4) of section
17 395.3025, Florida Statutes, is amended to read:

18 395.3025 Patient and personnel records; copies;
19 examination.—

20 (4) Patient records are confidential and must not be
21 disclosed without the consent of the patient or his or her legal
22 representative, but appropriate disclosure may be made without
23 such consent to:

24 (e) The department ~~agency~~ upon subpoena issued pursuant to
25 s. 456.071, ~~but~~ The records obtained thereby must be used
26 solely for the purpose of the agency, the department, and the
27 appropriate professional board in their ~~its~~ investigation,
28 prosecution, and appeal of disciplinary proceedings. If the
29 department ~~agency~~ requests copies of the records, the facility

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30 shall charge a fee pursuant to subsection (1) ~~no more than its~~
31 ~~actual copying costs, including reasonable staff time.~~ The
32 records must be sealed and may ~~must~~ not be available to the
33 public pursuant to s. 119.07(1) or any other statute providing
34 access to records, nor may they be available to the public as
35 part of the record of investigation for and prosecution in
36 disciplinary proceedings made available to the public by the
37 agency, the department, or the appropriate regulatory board.
38 However, the department ~~agency~~ must make available, upon written
39 request by a practitioner against whom probable cause has been
40 found, any such records that form the basis of the determination
41 of probable cause.

42 Section 2. Paragraph (a) of subsection (9) of section
43 456.057, Florida Statutes, is amended to read:

44 456.057 Ownership and control of patient records; report or
45 copies of records to be furnished.—

46 (9) (a) 1. The department may obtain patient records pursuant
47 to a subpoena without written authorization from the patient if
48 the department and the probable cause panel of the appropriate
49 board, if any, find reasonable cause to believe that a health
50 care practitioner has excessively or inappropriately prescribed
51 any controlled substance specified in chapter 893 in violation
52 of this chapter or any professional practice act or that a
53 health care practitioner has practiced his or her profession
54 below that level of care, skill, and treatment required as
55 defined by this chapter or any professional practice act and
56 also find that appropriate, reasonable attempts were made to
57 obtain a patient release. Notwithstanding the foregoing, the
58 department need not attempt to obtain a patient release when

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59 investigating an offense involving the inappropriate
60 prescribing, overprescribing, or diversion of controlled
61 substances and the offense involves a pain-management clinic.
62 The department may obtain patient records without patient
63 authorization or subpoena from any pain-management clinic
64 required to be licensed if the department has probable cause to
65 believe that a violation of any provision of s. 458.3265 or s.
66 459.0137 is occurring or has occurred and reasonably believes
67 that obtaining such authorization is not feasible due to the
68 volume of the dispensing and prescribing activity involving
69 controlled substances and that obtaining patient authorization
70 or the issuance of a subpoena would jeopardize the
71 investigation.

72 2. The department may obtain patient records and insurance
73 information pursuant to a subpoena without written authorization
74 from the patient if the department and the probable cause panel
75 of the appropriate board, if any, find reasonable cause to
76 believe that a health care practitioner has provided inadequate
77 medical care based on termination of insurance and also find
78 that appropriate, reasonable attempts were made to obtain a
79 patient release.

80 3. The department may obtain patient records, billing
81 records, insurance information, provider contracts, and all
82 attachments thereto pursuant to a subpoena without written
83 authorization from the patient if the department and probable
84 cause panel of the appropriate board, if any, find reasonable
85 cause to believe that a health care practitioner has submitted a
86 claim, statement, or bill using a billing code that would result
87 in payment greater in amount than would be paid using a billing

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88 code that accurately describes the services performed, requested
89 payment for services that were not performed by that health care
90 practitioner, used information derived from a written report of
91 an automobile accident generated pursuant to chapter 316 to
92 solicit or obtain patients personally or through an agent
93 regardless of whether the information is derived directly from
94 the report or a summary of that report or from another person,
95 solicited patients fraudulently, received a kickback as defined
96 in s. 456.054, violated the patient brokering provisions of s.
97 817.505, or presented or caused to be presented a false or
98 fraudulent insurance claim within the meaning of s.
99 817.234(1)(a), and also find that, within the meaning of s.
100 817.234(1)(a), patient authorization cannot be obtained because
101 the patient cannot be located or is deceased, incapacitated, or
102 suspected of being a participant in the fraud or scheme, and if
103 the subpoena is issued for specific and relevant records.

104 4. Notwithstanding subparagraphs 1.-3., when the department
105 investigates a professional liability claim or undertakes action
106 pursuant to s. 456.049 or s. 627.912, the department may obtain
107 patient records pursuant to a subpoena without written
108 authorization from the patient if the patient refuses to
109 cooperate or if the department attempts to obtain a patient
110 release and the failure to obtain the patient records would be
111 detrimental to the investigation.

112 5. If the department and the probable cause panel of the
113 appropriate board, if any, find reasonable cause to believe that
114 obtaining authorization from the patient would jeopardize the
115 investigation, the department may obtain patient records
116 pursuant to a subpoena without attempting to obtain written

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117 authorization from the patient.

118 Section 3. Subsection (5) is added to section 456.074,
119 Florida Statutes, to read:

120 456.074 Certain health care practitioners; immediate
121 suspension of license.-

122 (5) The department may issue an emergency order suspending
123 or restricting the license of any health care practitioner as
124 defined in s. 456.001(4) who has committed, or is under
125 investigation or prosecution for, any act that would constitute
126 the basis for discipline under the applicable practice act or
127 this chapter.

128 Section 4. This act shall take effect July 1, 2012.