

By Senator Lee

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1                                   A bill to be entitled  
2       An act relating to medical negligence actions;  
3       amending s. 456.057, F.S.; deleting a provision  
4       prohibiting the discussion of a patient's medical  
5       condition; providing circumstance under which patient  
6       records may be released without prior written  
7       authorization; revising conditions under which  
8       confidential patient information acquired in the  
9       course of care or treatment may be disclosed by a  
10      health care practitioner; amending s. 766.106, F.S.;  
11      providing that a prospective defendant may conduct an  
12      ex parte interview with a claimant's treating health  
13      care provider as a tool of informal discovery;  
14      amending s. 766.1065, F.S.; revising the form for the  
15      authorization for release of protected health  
16      information; providing for the release of protected  
17      health information to certain treating health care  
18      providers, insurers, and attorneys; authorizing a  
19      treating health care provider, insurer, or attorney to  
20      use protected health information in connection with  
21      legal services relating to a medical negligence claim;  
22      authorizing certain individuals and entities to  
23      conduct ex parte interviews with the claimant's health  
24      care providers; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28       Section 1. Subsections (7) and (8) of section 456.057,  
29       Florida Statutes, are amended to read:

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30 456.057 Ownership and control of patient records; report or  
31 copies of records to be furnished.—

32 (7) (a) Except as otherwise provided in this section and in  
33 s. 440.13(4) (c), such records may not be furnished to, ~~and the~~  
34 ~~medical condition of a patient may not be discussed with,~~ any  
35 person other than the patient, or ~~of~~ the patient's legal  
36 representative, or other health care practitioners and providers  
37 involved in the patient's care or treatment ~~of the patient,~~  
38 except upon written authorization from ~~of~~ the patient. However,  
39 such records may be furnished without written authorization  
40 under the following circumstances:

41 1. To any person, firm, or corporation that has procured or  
42 furnished such care ~~examination~~ or treatment with the patient's  
43 consent.

44 2. When compulsory physical examination is made pursuant to  
45 Rule 1.360, Florida Rules of Civil Procedure, in which case  
46 copies of the medical records shall be furnished to both the  
47 defendant and the plaintiff.

48 3. In any civil or criminal action, unless otherwise  
49 prohibited by law, upon the issuance of a subpoena from a court  
50 of competent jurisdiction and proper notice to the patient or  
51 the patient's legal representative by the party seeking such  
52 records.

53 4. For statistical and scientific research, provided the  
54 information is abstracted in such a way as to protect the  
55 identity of the patient or provided written permission is  
56 received from the patient or the patient's legal representative.

57 5. To a regional poison control center for purposes of  
58 treating a poison episode under evaluation, case management of

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59 poison cases, or compliance with data collection and reporting  
60 requirements of s. 395.1027 and the professional organization  
61 that certifies poison control centers in accordance with federal  
62 law.

63 6. To the attorney for the health care practitioner or  
64 provider, or to the attorney's staff, for the purpose of  
65 obtaining legal services, whether the attorney is hired directly  
66 by the practitioner or provider or by their insurer.

67 (b) Absent a specific written release or authorization  
68 permitting utilization of patient information for solicitation  
69 or marketing the sale of goods or services, any use of that  
70 information for those purposes is prohibited.

71 (8) Information disclosed to a health care practitioner by  
72 a patient in the course of the care and treatment of such  
73 patient is confidential and may be disclosed only under the  
74 following circumstances:

75 (a) To other health care practitioners and providers  
76 involved in the care or treatment of the patient.

77 (b) Pursuant to s. 766.106(6)(b)5.

78 (c) As provided for in the authorization for release of  
79 protected health information filed by the patient pursuant to s.  
80 766.1065.

81 (d) If permitted by written authorization from the patient.

82 (e) If compelled by subpoena at a deposition, evidentiary  
83 hearing, or trial for which proper notice has been given.

84 (f) To the attorney for the health care practitioner or  
85 provider, or to the attorney's staff, whether the attorney is  
86 hired directly by the practitioner or provider or by their  
87 insurer.

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88       (g) If the health care practitioner or provider is, or  
89 reasonably expects to be, named as a defendant in a medical  
90 negligence action or administrative proceeding ~~Except in a~~  
91 ~~medical negligence action or administrative proceeding when a~~  
92 ~~health care practitioner or provider is or reasonably expects to~~  
93 ~~be named as a defendant, information disclosed to a health care~~  
94 ~~practitioner by a patient in the course of the care and~~  
95 ~~treatment of such patient is confidential and may be disclosed~~  
96 ~~only to other health care practitioners and providers involved~~  
97 ~~in the care or treatment of the patient, or if permitted by~~  
98 ~~written authorization from the patient or compelled by subpoena~~  
99 ~~at a deposition, evidentiary hearing, or trial for which proper~~  
100 ~~notice has been given.~~

101       Section 2. Paragraph (b) of subsection (6) of section  
102 766.106, Florida Statutes, is amended to read:

103       766.106 Notice before filing action for medical negligence;  
104 presuit screening period; offers for admission of liability and  
105 for arbitration; informal discovery; review.—

106       (6) INFORMAL DISCOVERY.—

107       (b) Informal discovery may be used by a party to obtain  
108 unsworn statements, the production of documents or things, and  
109 physical and mental examinations, as follows:

110       1. Unsworn statements.—Any party may require other parties  
111 to appear for the taking of an unsworn statement. Such  
112 statements may be used only for the purpose of presuit screening  
113 and are not discoverable or admissible in any civil action for  
114 any purpose by any party. A party desiring to take the unsworn  
115 statement of any party must give reasonable notice in writing to  
116 all parties. The notice must state the time and place for taking

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117 the statement and the name and address of the party to be  
118 examined. Unless otherwise impractical, the examination of any  
119 party must be done at the same time by all other parties. Any  
120 party may be represented by counsel at the taking of an unsworn  
121 statement. An unsworn statement may be recorded electronically,  
122 stenographically, or on videotape. The taking of unsworn  
123 statements is subject to the provisions of the Florida Rules of  
124 Civil Procedure and may be terminated for abuses.

125       2. Documents or things.—Any party may request discovery of  
126 documents or things. The documents or things must be produced,  
127 at the expense of the requesting party, within 20 days after the  
128 date of receipt of the request. A party is required to produce  
129 discoverable documents or things within that party's possession  
130 or control. Medical records shall be produced as provided in s.  
131 766.204.

132       3. Physical and mental examinations.—A prospective  
133 defendant may require an injured claimant to appear for  
134 examination by an appropriate health care provider. The  
135 prospective defendant shall give reasonable notice in writing to  
136 all parties as to the time and place for examination. Unless  
137 otherwise impractical, a claimant is required to submit to only  
138 one examination on behalf of all potential defendants. The  
139 practicality of a single examination must be determined by the  
140 nature of the claimant's condition, as it relates to the  
141 liability of each prospective defendant. Such examination report  
142 is available to the parties and their attorneys upon payment of  
143 the reasonable cost of reproduction and may be used only for the  
144 purpose of presuit screening. Otherwise, such examination report  
145 is confidential and exempt from the provisions of s. 119.07(1)

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146 and s. 24(a), Art. I of the State Constitution.

147 4. Written questions.—Any party may request answers to  
148 written questions, the number of which may not exceed 30,  
149 including subparts. A response must be made within 20 days after  
150 receipt of the questions.

151 5. Ex parte interviews of treating health care providers.—A  
152 prospective defendant or his or her legal representative may  
153 interview the claimant's treating health care providers, without  
154 notice to, or the presence of, the claimant or the claimant's  
155 legal representative.

156 ~~6.5.~~ Unsworn statements of treating health care providers.—  
157 A prospective defendant or his or her legal representative may  
158 also take unsworn statements of the claimant's treating health  
159 care providers. The statements must be limited to those areas  
160 that are potentially relevant to the claim of personal injury or  
161 wrongful death. Subject to the procedural requirements of  
162 subparagraph 1., a prospective defendant may take unsworn  
163 statements from a claimant's treating physicians. Reasonable  
164 notice and opportunity to be heard must be given to the claimant  
165 or the claimant's legal representative before taking unsworn  
166 statements. The claimant or claimant's legal representative has  
167 the right to attend the taking of such unsworn statements.

168 Section 3. Subsection (3) of section 766.1065, Florida  
169 Statutes, is amended to read:

170 766.1065 Authorization for release of protected health  
171 information.—

172 (3) The authorization required by this section shall be in  
173 the following form and shall be construed in accordance with the  
174 "Standards for Privacy of Individually Identifiable Health

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175 Information" in 45 C.F.R. parts 160 and 164:

176

177 AUTHORIZATION FOR RELEASE OF

178 PROTECTED HEALTH INFORMATION

179

180 A. I, (...Name of patient or authorized  
181 representative...) [hereinafter "Patient"], authorize  
182 that (...Name of health care provider to whom the  
183 presuit notice is directed...) and his/her/its  
184 insurer(s), self-insurer(s), and attorney(s), and the  
185 designated treating health care provider(s) listed  
186 below and his/her/its insurer(s), self-insurer(s), and  
187 attorney(s) may obtain and disclose (within the  
188 parameters set out below) the protected health  
189 information described below for the following specific  
190 purposes:

191 1. Facilitating the investigation and evaluation  
192 of the medical negligence claim described in the  
193 accompanying presuit notice; ~~or~~

194 2. Defending against any litigation arising out  
195 of the medical negligence claim made on the basis of  
196 the accompanying presuit notice; or.

197 3. Obtaining legal advice or representation  
198 arising out of the medical negligence claim described  
199 in the accompanying presuit notice.

200 B. The health information obtained, used, or  
201 disclosed extends to, and includes, ~~the~~ verbal health  
202 information as well as ~~the~~ written health information  
203 and is described as follows:

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204           1. The health information in the custody of the  
205           following health care providers who have examined,  
206           evaluated, or treated the Patient in connection with  
207           injuries complained of after the alleged act of  
208           negligence: (List the name and current address of all  
209           health care providers). This authorization extends to  
210           any additional health care providers that may in the  
211           future evaluate, examine, or treat the Patient for the  
212           injuries complained of.

213           2. The health information in the custody of the  
214           following health care providers who have examined,  
215           evaluated, or treated the Patient during a period  
216           commencing 2 years before the incident that is the  
217           basis of the accompanying presuit notice.

218  
219           (List the name and current address of such health care  
220           providers, if applicable.)

221  
222           C. This authorization does not apply to the  
223           following list of health care providers possessing  
224           health care information about the Patient because the  
225           Patient certifies that such health care information is  
226           not potentially relevant to the claim of personal  
227           injury or wrongful death that is the basis of the  
228           accompanying presuit notice.

229  
230           (List the name of each health care provider to whom  
231           this authorization does not apply and the inclusive  
232           dates of examination, evaluation, or treatment to be



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233 withheld from disclosure. If none, specify "none.")

234

235 D. The persons or class of persons to whom the  
236 Patient authorizes such health information to be  
237 disclosed or by whom such health information is to be  
238 used:

239 1. Any health care provider providing care or  
240 treatment for the Patient.

241 2. Any liability insurer or self-insurer  
242 providing liability insurance coverage, self-  
243 insurance, or defense to any health care provider to  
244 whom presuit notice is given, or to any health care  
245 provider listed in subsections B.1.-2. above,  
246 regarding the care and treatment of the Patient.

247 3. Any consulting or testifying expert employed  
248 by or on behalf of (name of health care provider to  
249 whom presuit notice was given) and his/her/its  
250 insurer(s), self-insurer(s), or attorney(s) regarding  
251 the matter of the presuit notice accompanying this  
252 authorization.

253 4. Any attorney (including his/her ~~secretarial,~~  
254 ~~clerical, or paralegal~~ staff) employed by or on behalf  
255 of (name of health care provider to whom presuit  
256 notice was given) or employed by or on behalf of any  
257 health care provider(s) listed in subsections B.1.-2.  
258 above, regarding the matter of the presuit notice  
259 accompanying this authorization or the care and  
260 treatment of the Patient.

261 5. Any trier of the law or facts relating to any

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262 suit filed seeking damages arising out of the medical  
263 care or treatment of the Patient.

264 E. This authorization expressly allows the  
265 persons or class of persons listed in subsections  
266 D.2.-4. above to interview the health care providers  
267 listed in subsections B.1.-2. above, without notice to  
268 or the presence of the Patient or the Patient's  
269 attorney.

270 ~~F.E.~~ This authorization expires upon resolution  
271 of the claim or at the conclusion of any litigation  
272 instituted in connection with the matter of the  
273 presuit notice accompanying this authorization,  
274 whichever occurs first.

275 ~~G.F.~~ The Patient understands that, without  
276 exception, the Patient has the right to revoke this  
277 authorization in writing. The Patient further  
278 understands that the consequence of any such  
279 revocation is that the presuit notice under s.  
280 766.106(2), Florida Statutes, is deemed retroactively  
281 void from the date of issuance, and any tolling effect  
282 that the presuit notice may have had on any applicable  
283 statute-of-limitations period is retroactively  
284 rendered void.

285 ~~H.G.~~ The Patient understands that signing this  
286 authorization is not a condition for continued  
287 treatment, payment, enrollment, or eligibility for  
288 health plan benefits.

289 I.H. The Patient understands that information  
290 used or disclosed under this authorization may be

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291 subject to additional disclosure by the recipient and  
292 may not be protected by federal HIPAA privacy  
293 regulations.

294

295 Signature of Patient/Representative: ....

296 Date: ....

297 Name of Patient/Representative: ....

298 Description of Representative's Authority: ....

299 Section 4. This act shall take effect July 1, 2013.