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1                   A bill to be entitled  
2           An act relating to presuit discovery in medical  
3           negligence actions; amending s. 766.1065, F.S.;  
4           revising the authorization form for release of  
5           protected health information which clarifies that the  
6           authorization only permits health care providers to  
7           furnish copies of written and electronic medical  
8           records; clarifying provisions in the authorization  
9           form which relate to the use of the patient's health  
10          information; providing an effective date.

11  
12   Be It Enacted by the Legislature of the State of Florida:

13  
14          Section 1.   Section 766.1065, Florida Statutes, is amended  
15   to read:

16          766.1065   Authorization for release of protected health  
17   information.—

18          (1)   Presuit notice of intent to initiate litigation for  
19   medical negligence under s. 766.106(2) must be accompanied by an  
20   authorization for release of protected health information in the  
21   form specified by this section, authorizing the disclosure of  
22   protected health information that is potentially relevant to the  
23   claim of personal injury or wrongful death. The presuit notice  
24   is void if this authorization does not accompany the presuit  
25   notice and other materials required by s. 766.106(2).

26          (2)   If the authorization required by this section is  
27   revoked, the presuit notice under s. 766.106(2) is deemed  
28   retroactively void from the date of issuance, and any tolling

29 | effect that the presuit notice may have had on any applicable  
 30 | statute-of-limitations period is retroactively rendered void.

31 | (3) The authorization required by this section shall be in  
 32 | the following form and shall be construed in accordance with the  
 33 | "Standards for Privacy of Individually Identifiable Health  
 34 | Information" in 45 C.F.R. parts 160 and 164:

35 |  
 36 | AUTHORIZATION FOR RELEASE OF  
 37 | PROTECTED HEALTH INFORMATION  
 38 |

39 | A. I, (...Name of patient or authorized  
 40 | representative...) [hereinafter "Patient"], authorize  
 41 | that (...Name of health care provider to whom the  
 42 | presuit notice is directed...) and his/her/its  
 43 | insurer(s), self-insurer(s), and attorney(s) may  
 44 | obtain and disclose (within the parameters set out  
 45 | below) the protected health information described  
 46 | below for the following specific purposes:

- 47 | 1. Facilitating the investigation and evaluation of  
 48 | the medical negligence claim described in the  
 49 | accompanying presuit notice; or  
 50 | 2. Defending against any litigation arising out of  
 51 | the medical negligence claim made on the basis of the  
 52 | accompanying presuit notice.

53 | B. This authorization only permits health care  
 54 | providers to furnish copies of written and electronic  
 55 | records. This authorization may not be construed to  
 56 | allow a health care provider to have any other

57 | communications, discussions, or conversations  
58 | regarding the Patient's health information.

59 | C. The health information authorized to be obtained,  
60 | used, or disclosed ~~extends to, and includes, the~~  
61 | ~~verbal as well as the written~~ and is described as  
62 | follows:

63 | 1. The health information in the custody of the  
64 | following health care providers who have examined,  
65 | evaluated, or treated the Patient in connection with  
66 | injuries complained of after the alleged act of  
67 | negligence: (List the name and current address of all  
68 | health care providers). This authorization extends to  
69 | any additional health care providers that may in the  
70 | future evaluate, examine, or treat the Patient for the  
71 | injuries complained of.

72 | 2. The health information in the custody of the  
73 | following health care providers who have examined,  
74 | evaluated, or treated the Patient during a period  
75 | commencing 2 years before the incident that is the  
76 | basis of the accompanying presuit notice.

77 |  
78 | (List the name and current address of such health care  
79 | providers, if applicable.)

80 |  
81 | ~~D.C.~~ This authorization does not apply to the  
82 | following list of health care providers possessing  
83 | health care information about the Patient because the  
84 | Patient certifies that such health care information is

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85 | not potentially relevant to the claim of personal  
86 | injury or wrongful death that is the basis of the  
87 | accompanying presuit notice.

88 |  
89 | (List the name of each health care provider to whom  
90 | this authorization does not apply and the inclusive  
91 | dates of examination, evaluation, or treatment to be  
92 | withheld from disclosure. If none, specify "none.")  
93 |

94 | E.D. The persons or class of persons to whom the  
95 | Patient authorizes such health information to be  
96 | disclosed or by whom such health information is to be  
97 | used:

98 | 1. Any health care provider providing care or  
99 | treatment for the Patient.

100 | 2. Any liability insurer or self-insurer providing  
101 | liability insurance coverage, self-insurance, or  
102 | defense to any health care provider to whom presuit  
103 | notice is given regarding the care and treatment of  
104 | the Patient.

105 | 3. Any consulting or testifying expert employed by or  
106 | on behalf of (name of health care provider to whom  
107 | presuit notice was given) and his/her/its insurer(s),  
108 | self-insurer(s), or attorney(s) regarding the matter  
109 | of the presuit notice accompanying this authorization.

110 | 4. Any attorney (including secretarial, clerical, or  
111 | paralegal staff) employed by or on behalf of (name of  
112 | health care provider to whom presuit notice was given)

113 regarding the matter of the presuit notice  
114 accompanying this authorization.

115 5. Any trier of the law or facts relating to any suit  
116 filed seeking damages arising out of the medical care  
117 or treatment of the Patient as stated in the presuit  
118 notice of intent to which this authorization is  
119 attached.

120 ~~F.E.~~ This authorization expires upon resolution of  
121 the claim or at the conclusion of any litigation  
122 instituted in connection with the matter of the  
123 presuit notice accompanying this authorization,  
124 whichever occurs first.

125 ~~G.F.~~ The Patient understands that, without exception,  
126 the Patient has the right to revoke this authorization  
127 in writing. The Patient further understands that the  
128 consequence of any such revocation is that the presuit  
129 notice under s. 766.106(2), Florida Statutes, is  
130 deemed retroactively void from the date of issuance,  
131 and any tolling effect that the presuit notice may  
132 have had on any applicable statute-of-limitations  
133 period is retroactively rendered void.

134 ~~H.G.~~ The Patient understands that signing this  
135 authorization is not a condition for continued  
136 treatment, payment, enrollment, or eligibility for  
137 health plan benefits.

138 ~~I.H.~~ The Patient understands that information used or  
139 disclosed under this authorization may be subject to  
140 additional disclosure by the recipient and may not be

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141 |           protected by federal HIPAA privacy regulations.

142

143 |           Signature of Patient/Representative: ....

144 |           Date: ....

145 |           Name of Patient/Representative: ....

146 |           Description of Representative's Authority: ....

147 |           Section 2. This act shall take effect upon becoming a law.