



LEGISLATIVE ACTION

Senate . House

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Floor: WD/2R .

04/10/2013 04:42 PM .

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Senator Flores moved the following:

Senate Amendment (with title amendment)

Delete lines 222 - 369

and insert:

5. Interviews of treating health care providers.—A prospective defendant or his or her legal representative may interview the claimant's treating health care providers without notice to, or the presence of, the claimant or the claimant's legal representative consistent with the authorization for release of protected health information. This subparagraph does not require a claimant's treating health care provider to submit to a request for an interview. Notice of the intent to conduct an interview shall be provided to the claimant or the claimant's



202196

14 legal representative, who shall be responsible for arranging a
15 mutually convenient date, time and location for the interview
16 within 15 days after the request is made. For subsequent
17 interviews, the prospective defendant or his or her
18 representative shall notify the claimant and his or her legal
19 representative within 72 hours of the subsequent interview. If
20 the claimant's attorney fails to schedule an interview, the
21 prospective defendant or his or her legal representative may
22 attempt to conduct an interview without further notice to the
23 claimant or the claimant's legal representative.

24 ~~6.5.~~ Unsworn statements of treating health care providers.-
25 A prospective defendant or his or her legal representative may
26 also take unsworn statements of the claimant's treating health
27 care providers. The statements must be limited to those areas
28 that are potentially relevant to the claim of personal injury or
29 wrongful death. Subject to the procedural requirements of
30 subparagraph 1., a prospective defendant may take unsworn
31 statements from a claimant's treating physicians. Reasonable
32 notice and opportunity to be heard must be given to the claimant
33 or the claimant's legal representative before taking unsworn
34 statements. The claimant or claimant's legal representative has
35 the right to attend the taking of such unsworn statements.

36 Section 4. Subsection (3) of section 766.1065, Florida
37 Statutes, is amended to read:

38 766.1065 Authorization for release of protected health
39 information.-

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



202196

43 Information" in 45 C.F.R. parts 160 and 164:
44

45 AUTHORIZATION FOR RELEASE OF
46 PROTECTED HEALTH INFORMATION
47

48 A. I, (...Name of patient or authorized
49 representative...) [hereinafter "Patient"], authorize
50 that (...Name of health care provider to whom the
51 presuit notice is directed...) and his/her/its
52 insurer(s), self-insurer(s), and attorney(s), and the
53 designated treating health care provider(s) listed
54 below and his/her/its insurer(s), self-insurer(s), and
55 attorney(s) may obtain and disclose (within the
56 parameters set out below) the protected health
57 information described below for the following specific
58 purposes:

59 1. Facilitating the investigation and evaluation
60 of the medical negligence claim described in the
61 accompanying presuit notice; ~~or~~

62 2. Defending against any litigation arising out
63 of the medical negligence claim made on the basis of
64 the accompanying presuit notice; or -

65 3. Obtaining legal advice or representation
66 arising out of the medical negligence claim described
67 in the accompanying presuit notice.

68 B. The health information obtained, used, or
69 disclosed extends to, and includes, ~~the~~ verbal health
70 information as well as ~~the~~ written health information
71 and is described as follows:



202196

72 1. The health information in the custody of the
73 following health care providers who have examined,
74 evaluated, or treated the Patient in connection with
75 injuries complained of after the alleged act of
76 negligence: (List the name and current address of all
77 health care providers). This authorization extends to
78 any additional health care providers that may in the
79 future evaluate, examine, or treat the Patient for the
80 injuries complained of.

81 2. The health information in the custody of the
82 following health care providers who have examined,
83 evaluated, or treated the Patient during a period
84 commencing 2 years before the incident that is the
85 basis of the accompanying presuit notice.

86
87 (List the name and current address of such health care
88 providers, if applicable.)
89

90 C. This authorization does not apply to the
91 following list of health care providers possessing
92 health care information about the Patient because the
93 Patient certifies that such health care information is
94 not potentially relevant to the claim of personal
95 injury or wrongful death that is the basis of the
96 accompanying presuit notice.

97
98 (List the name of each health care provider to whom
99 this authorization does not apply and the inclusive
100 dates of examination, evaluation, or treatment to be



202196

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

102
103 D. The persons or class of persons to whom the
104 Patient authorizes such health information to be
105 disclosed or by whom such health information is to be
106 used:

107 1. Any health care provider providing care or
108 treatment for the Patient.

109 2. Any liability insurer or self-insurer
110 providing liability insurance coverage, self-
111 insurance, or defense to any health care provider to
112 whom presuit notice is given, or to any health care
113 provider listed in subsections B.1.-2. above,
114 regarding the care and treatment of the Patient.

115 3. Any consulting or testifying expert employed
116 by or on behalf of (name of health care provider to
117 whom presuit notice was given) and his/her/its
118 insurer(s), self-insurer(s), or attorney(s) regarding
119 the matter of the presuit notice accompanying this
120 authorization.

121 4. Any attorney (including his/her ~~secretarial,~~
122 ~~clerical, or paralegal~~ staff) employed by or on behalf
123 of (name of health care provider to whom presuit
124 notice was given) or employed by or on behalf of any
125 health care provider(s) listed in subsections B.1.-2.
126 above, regarding the matter of the presuit notice
127 accompanying this authorization or the care and
128 treatment of the Patient.

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



202196

130 suit filed seeking damages arising out of the medical
131 care or treatment of the Patient.

132 E. This authorization expressly allows the
133 persons or class of persons listed in subsections
134 D.2.-4. above to interview the health care providers
135 listed in subsections B.1.-2. above, without the
136 presence of the Patient or the Patient's attorney.

137 ~~F.E.~~ This authorization expires upon resolution of the
138 claim or at the conclusion of any litigation instituted in
139 connection with the matter of the presuit notice accompanying
140 this authorization, whichever occurs first.

141 ~~G.F.~~ The Patient understands that, without exception, the
142 Patient has the right to revoke this authorization in writing.
143 The Patient further understands that the consequence of any such
144 revocation is that the presuit notice under s. 766.106(2),
145 Florida Statutes, is deemed retroactively void from the date of
146 issuance, and any tolling effect that the presuit notice may
147 have had on any applicable statute-of-limitations period is
148 retroactively rendered void.

149 ~~H.G.~~ The Patient understands that signing this
150 authorization is not a condition for continued treatment,
151 payment, enrollment, or eligibility for health plan benefits.

152 ~~I.H.~~ The Patient understands that information used or
153 disclosed under this authorization may be subject to additional
154 disclosure by the recipient and may not be protected by federal
155 HIPAA privacy regulations.

156
157 Signature of Patient/Representative:

158 Date:



159 Name of Patient/Representative:
160 Description of Representative's Authority:
161
162 ===== T I T L E A M E N D M E N T =====
163 And the title is amended as follows:
164 Delete lines 27 - 39
165 and insert:
166 defendant may conduct an interview with a claimant's
167 treating health care provider as a tool of informal
168 discovery; amending s. 766.1065, F.S.; revising the
169 form for the authorization of release of protected
170 health information; providing for the release of
171 protected health information to certain treating
172 health care providers, insurers, and attorneys;
173 authorizing a treating health care provider, insurer,
174 or attorney to use protected health information in
175 connection with legal services relating to a medical
176 negligence claim; authorizing certain individuals and
177 entities to conduct interviews with the claimant's
178 health care providers;