

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Grant offered the following:

2
3 **Substitute Amendment for Amendment (383625) (with title**
4 **amendment)**

5 Remove lines 230-357 and insert:

6 5. Informal interviews of treating health care providers.-A
7 prospective defendant or his or her legal representative may
8 interview the claimant's treating health care providers in an
9 informal setting, but only with the explicit consent of the
10 claimant or the claimant's legal representative; however, this
11 subparagraph does not require a claimant's treating health care
12 provider to submit to a request for an interview by a
13 prospective defendant or his or her legal representative. A
14 prospective defendant or his or her legal representative seeking
15 to interview a claimant's treating health care provider must
16 provide the claimant or the claimant's legal representative with

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17 a written request for consent to conduct the interview at least
18 15 days before the date of the desired interview. If the
19 claimant or claimant's legal representative consents to the
20 interview, notice of the interview shall be provided to the
21 prospective defendant or his or her legal representative not
22 more than 10 days after receipt of the request. As a condition
23 to giving consent for the interview, the claimant or the
24 claimant's legal representative may require that:

25 a. The claimant or the claimant's attorney be present
26 during the interview; or

27 b. The interview be recorded by a certified court
28 reporter, a transcription of the interview be provided to the
29 claimant at the prospective defendant's expense, and no portion
30 of the interview may be conducted outside the presence of the
31 court reporter or off the transcribed record.

32 ~~6.5.~~ Unsworn statements of treating health care
33 providers.—A prospective defendant or his or her legal
34 representative may also take unsworn statements of the
35 claimant's treating health care providers. The statements must
36 be limited to those areas that are potentially relevant to the
37 claim of personal injury or wrongful death. Subject to the
38 procedural requirements of subparagraph 1., a prospective
39 defendant may take unsworn statements from a claimant's treating
40 physicians. Reasonable notice and opportunity to be heard must
41 be given to the claimant or the claimant's legal representative
42 before taking unsworn statements. The claimant or claimant's
43 legal representative has the right to attend the taking of such
44 unsworn statements.

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

47 766.1065 Authorization for release of protected health
48 information.—

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

53
54 AUTHORIZATION FOR RELEASE OF
55 PROTECTED HEALTH INFORMATION
56

57 A. I, (...Name of patient or authorized
58 representative...) [hereinafter "Patient"], authorize
59 that (...Name of health care provider to whom the
60 presuit notice is directed...) and his/her/its
61 insurer(s), self-insurer(s), and attorney(s), and the
62 designated treating health care provider(s) listed
63 below and his/her/its insurer(s), self-insurer(s), and
64 attorney(s) may obtain and disclose (within the
65 parameters set out below) the protected health
66 information described below for the following specific
67 purposes:

- 68 1. Facilitating the investigation and evaluation of
69 the medical negligence claim described in the
70 accompanying presuit notice; ~~or~~

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71 2. Defending against any litigation arising out of
72 the medical negligence claim made on the basis of the
73 accompanying presuit notice; or-

74 3. Obtaining legal advice or representation arising
75 out of the medical negligence claim described in the
76 accompanying presuit notice.

77 B. The health information obtained, used, or
78 disclosed extends to, and includes, ~~the~~ verbal health
79 information as well as ~~the~~ written health information
80 and is described as follows:

81 1. The health information in the custody of the
82 following health care providers who have examined,
83 evaluated, or treated the Patient in connection with
84 injuries complained of after the alleged act of
85 negligence: (List the name and current address of all
86 health care providers). This authorization extends to
87 any additional health care providers that may in the
88 future evaluate, examine, or treat the Patient for the
89 injuries complained of.

90 2. The health information in the custody of the
91 following health care providers who have examined,
92 evaluated, or treated the Patient during a period
93 commencing 2 years before the incident that is the
94 basis of the accompanying presuit notice.

95
96 (List the name and current address of such health care
97 providers, if applicable.)
98

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99 C. This authorization does not apply to the following
100 list of health care providers possessing health care
101 information about the Patient because the Patient
102 certifies that such health care information is not
103 potentially relevant to the claim of personal injury
104 or wrongful death that is the basis of the
105 accompanying presuit notice.

106
107 (List the name of each health care provider to whom
108 this authorization does not apply and the inclusive
109 dates of examination, evaluation, or treatment to be
110 withheld from disclosure. If none, specify "none.")
111

112 D. The persons or class of persons to whom the
113 Patient authorizes such health information to be
114 disclosed or by whom such health information is to be
115 used:

- 116 1. Any health care provider providing care or
117 treatment for the Patient.
- 118 2. Any liability insurer or self-insurer providing
119 liability insurance coverage, self-insurance, or
120 defense to any health care provider to whom presuit
121 notice is given, or to any health care provider listed
122 in subsections B.1.-2. above, regarding the care and
123 treatment of the Patient.
- 124 3. Any consulting or testifying expert employed by or
125 on behalf of (name of health care provider to whom
126 presuit notice was given) and his/her/its insurer(s),

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127 self-insurer(s), or attorney(s) regarding the matter
128 of the presuit notice accompanying this authorization.

129 4. Any attorney (including his/her ~~secretarial,~~
130 ~~clerical, or paralegal~~ staff) employed by or on behalf
131 of (name of health care provider to whom presuit
132 notice was given) or employed by or on behalf of any
133 health care provider(s) listed in subsections B.1.-2.
134 above, regarding the matter of the presuit notice
135 accompanying this authorization or the care and
136 treatment of the Patient.

137 5. Any trier of the law or facts relating to any suit
138 filed seeking damages arising out of the medical care
139 or treatment of the Patient.

140 E. This authorization does not permit the

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

143 Remove line 41 and insert:
144 health care providers under certain circumstances;
145 amending s. 381.028, F.S.;