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LEGISLATIVE ACTION

Senate

House

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Floor: WD/2R

04/10/2013 04:39 PM

Senator Flores moved the following:

Senate Amendment (with title amendment)

Delete lines 87 - 360

and insert:

(c)~~(8)~~ Except in a medical negligence action or administrative proceeding when a health care practitioner or provider is or reasonably expects to be named as a defendant, Information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care practitioners and providers involved in the care or treatment of the patient, ~~or~~ if allowed ~~permitted~~ by written authorization from the patient, or if compelled by subpoena at a deposition,



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14 evidentiary hearing, or trial for which proper notice has been
15 given.

16 (d) Notwithstanding paragraphs (a)-(c), information
17 disclosed by a patient to a health care practitioner or provider
18 or records created by the practitioner or provider during the
19 course of care or treatment of the patient may be disclosed:

20 1. In a medical negligence action or administrative
21 proceeding if the health care practitioner or provider is or
22 reasonably expects to be named as a defendant;

23 2. As provided for in the authorization for release of
24 protected health information filed by the patient pursuant to s.
25 766.1065; or

26 3. To the health care practitioner's or provider's attorney
27 during a consultation if the health care practitioner or
28 provider reasonably expects to be deposed, to be called as a
29 witness, or to receive formal or informal discovery requests in
30 a medical negligence action, presuit investigation of medical
31 negligence, or administrative proceeding.

32 a. If the medical liability insurer of a health care
33 practitioner or provider described in this subparagraph
34 represents a defendant or prospective defendant in a medical
35 negligence action:

36 (I) The insurer may not select an attorney for the
37 practitioner or the provider. However, the insurer may recommend
38 attorneys who do not represent a defendant or prospective
39 defendant in the matter.

40 (II) The attorney selected by the practitioner or the
41 provider may not, directly or indirectly, disclose to the
42 insurer any information relating to the representation of the



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43 practitioner or the provider other than the categories of work
44 performed or the amount of time applicable to each category for
45 billing or reimbursement purposes. The attorney selected by the
46 practitioner or the provider may represent the insurer or other
47 insureds of the insurer in an unrelated matter.

48 b. The limitations in this subparagraph do not apply if the
49 attorney reasonably expects the practitioner or provider to be
50 named as a defendant and the practitioner or provider agrees
51 with the attorney's assessment, if the practitioner or provider
52 receives a presuit notice pursuant to chapter 766, or if the
53 practitioner or provider is named as a defendant.

54 Section 2. Paragraph (a) of subsection (5) and subsection
55 (14) of section 766.102, Florida Statutes, are amended to read:
56 766.102 Medical negligence; standards of recovery; expert
57 witness.—

58 (5) A person may not give expert testimony concerning the
59 prevailing professional standard of care unless the person is a
60 health care provider who holds an active and valid license and
61 conducts a complete review of the pertinent medical records and
62 meets the following criteria:

63 (a) If the health care provider against whom or on whose
64 behalf the testimony is offered is a specialist, the expert
65 witness must:

66 1. Specialize in the same specialty as the health care
67 provider against whom or on whose behalf the testimony is
68 offered; ~~or specialize in a similar specialty that includes the~~
69 ~~evaluation, diagnosis, or treatment of the medical condition~~
70 ~~that is the subject of the claim and have prior experience~~
71 ~~treating similar patients; and~~



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72 2. Have devoted professional time during the 3 years
73 immediately preceding the date of the occurrence that is the
74 basis for the action to:

75 a. The active clinical practice of, or consulting with
76 respect to, the same ~~or similar~~ specialty ~~that includes the~~
77 ~~evaluation, diagnosis, or treatment of the medical condition~~
78 ~~that is the subject of the claim and have prior experience~~
79 ~~treating similar patients;~~

80 b. Instruction of students in an accredited health
81 professional school or accredited residency or clinical research
82 program in the same ~~or similar~~ specialty; or

83 c. A clinical research program that is affiliated with an
84 accredited health professional school or accredited residency or
85 clinical research program in the same ~~or similar~~ specialty.

86 ~~(14) This section does not limit the power of the trial~~
87 ~~court to disqualify or qualify an expert witness on grounds~~
88 ~~other than the qualifications in this section.~~

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

91 766.1065 Authorization for release of protected health
92 information.—

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

97
98 AUTHORIZATION FOR RELEASE OF
99 PROTECTED HEALTH INFORMATION



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101 A. I, (...Name of patient or authorized
102 representative...) [hereinafter "Patient"], authorize
103 that (...Name of health care provider to whom the
104 presuit notice is directed...) and his/her/its
105 insurer(s), self-insurer(s), and attorney(s), and the
106 designated treating health care provider(s) listed
107 below and his/her/its(their) insurer(s), self-
108 insurer(s), and attorney(s) may obtain and disclose
109 (within the parameters set out below) the protected
110 health information described below for the following
111 specific purposes:

112 1. Facilitating the investigation and evaluation
113 of the medical negligence claim described in the
114 accompanying presuit notice; ~~or~~

115 2. Defending against any litigation arising out
116 of the medical negligence claim made on the basis of
117 the accompanying presuit notice; or-

118 3. Obtaining legal advice or representation
119 arising out of the medical negligence claim described
120 in the accompanying presuit notice.

121 B. The health information obtained, used, or
122 disclosed extends to, and includes, ~~the~~ verbal health
123 information as well as ~~the~~ written health information
124 and is described as follows:

125 1. The health information in the custody of the
126 following health care providers who have examined,
127 evaluated, or treated the Patient in connection with
128 injuries complained of after the alleged act of
129 negligence: (List the name and current address of all



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130 health care providers). This authorization extends to
131 any additional health care providers that may in the
132 future evaluate, examine, or treat the Patient for the
133 injuries complained of.

134 2. The health information in the custody of the
135 following health care providers who have examined,
136 evaluated, or treated the Patient during a period
137 commencing 2 years before the incident that is the
138 basis of the accompanying presuit notice.

139
140 (List the name and current address of such health care
141 providers, if applicable.)
142

143 C. This authorization does not apply to the
144 following list of health care providers possessing
145 health care information about the Patient because the
146 Patient certifies that such health care information is
147 not potentially relevant to the claim of personal
148 injury or wrongful death that is the basis of the
149 accompanying presuit notice.

150
151 (List the name of each health care provider to whom
152 this authorization does not apply and the inclusive
153 dates of examination, evaluation, or treatment to be
154 withheld from disclosure. If none, specify "none.")
155

156 D. The persons or class of persons to whom the
157 Patient authorizes such health information to be
158 disclosed or by whom such health information is to be



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159 used:

160 1. Any health care provider providing care or
161 treatment for the Patient.

162 2. Any liability insurer or self-insurer
163 providing liability insurance coverage, self-
164 insurance, or defense to any health care provider to
165 whom presuit notice is given, or to any health care
166 provider(s) listed in subsections B.1.-2. above,
167 regarding the care and treatment of the Patient.

168 3. Any consulting or testifying expert employed
169 by or on behalf of (name of health care provider to
170 whom presuit notice was given) and his/her/its
171 insurer(s), self-insurer(s), or attorney(s) regarding
172 the matter of the presuit notice accompanying this
173 authorization.

174 4. Any attorney (including his or her
175 ~~secretarial, clerical, or paralegal~~ staff) employed by
176 or on behalf of (name of health care provider to whom
177 presuit notice was given) or employed by or on behalf
178 of any health care provider(s) listed in subsections
179 B.1.-2. above, regarding the matter of the presuit
180 notice accompanying this authorization or the care and
181 treatment of the Patient.

182 5. Any trier of the law or facts relating to any
183 suit filed seeking damages arising out of the medical
184 care or treatment of the Patient.

185 E. This authorization expires upon resolution of
186 the claim or at the conclusion of any litigation
187 instituted in connection with the matter of the



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188 presuit notice accompanying this authorization,
189 whichever occurs first.

190 F. The Patient understands that, without
191 exception, the Patient has the right to revoke this
192 authorization in writing. The Patient further
193 understands that the consequence of any such
194 revocation is that the presuit notice under s.
195 766.106(2), Florida Statutes, is deemed retroactively
196 void from the date of issuance, and any tolling effect
197 that the presuit notice may have had on any applicable
198 statute-of-limitations period is retroactively
199 rendered void.

200 G. The Patient understands that signing this
201 authorization is not a condition for continued
202 treatment, payment, enrollment, or eligibility for
203 health plan benefits.

204 H. The Patient understands that information

205
206 ===== T I T L E A M E N D M E N T =====

207 And the title is amended as follows:

208 Delete lines 26 - 39

209 and insert:

210 s. 766.1065, F.S.; revising the form for the
211 authorization of release of protected health
212 information; providing for the release of protected
213 health information to certain treating health care
214 providers, insurers, and attorneys; authorizing a
215 treating health care provider, insurer, or attorney to
216 use protected health information in connection with



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217

legal services relating to a medical negligence claim;