

## Senate Bill No. 1408

An act relating to medical records; amending s. 456.057, F.S.; providing definitions; requiring a health care practitioner's employer who is a records owner and a records custodian to comply with specified requirements for confidentiality and disclosure; amending s. 456.42, F.S.; providing requirements for prescriptions of medicinal drugs by health care practitioners which are electronically generated or transmitted; creating s. 456.43, F.S.; regulating electronic prescribing for medicinal drugs; providing restrictions for electronic prescribing software; providing definitions; authorizing electronic prescribing software to show information regarding a payor's formulary under certain circumstances; amending s. 465.025, F.S.; specifying requirements for a prescriber to prevent generic substitution of brand name drugs when a prescription is electronically transmitted or generated; amending s. 381.028, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (3) through (19) of section 456.057, Florida Statutes, are redesignated as subsections (5) through (21), respectively, and new subsections (3) and (4) are added to that section, to read:

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

(3) As used in this section, the term “records custodian” means any person or entity that:

(a) Maintains documents that are authorized in subsection (2); or

(b) Obtains medical records from a records owner.

(4) Any health care practitioner's employer who is a records owner and any records custodian shall maintain records or documents as provided under the confidentiality and disclosure requirements of this section.

Section 2. Section 456.42, Florida Statutes, is amended to read:

456.42 Written prescriptions for medicinal drugs.—A written prescription for a medicinal drug issued by a health care practitioner licensed by law to prescribe such drug must be legibly printed or typed so as to be capable of being understood by the pharmacist filling the prescription; must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed in both textual and numerical formats, and the directions for use of the drug; must be dated with the month written out in textual letters; and must be signed by the prescribing practitioner on the day when issued. However, a prescription that is electronically generated and transmitted must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity

of the drug prescribed in numerical format, and the direction for use of the drug and must be dated and signed by the prescribing practitioner only on the day issued, which signature may be in an electronic format as defined in s. 668.003(4).

Section 3. Section 456.43, Florida Statutes, is created to read:

456.43 Electronic prescribing for medicinal drugs.—

(1) Electronic prescribing shall not interfere with a patient’s freedom to choose a pharmacy.

(2) Electronic prescribing software shall not use any means or permit any other person to use any means, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of a prescribing practitioner at the point of care. Such means shall not be triggered or in specific response to the input, selection, or act of a prescribing practitioner or his or her agent in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy.

(a) The term “prescribing decision” means a prescribing practitioner’s decision to prescribe a certain pharmaceutical.

(b) The term “point of care” means the time that a prescribing practitioner or his or her agent is in the act of prescribing a certain pharmaceutical.

(3) Electronic prescribing software may show information regarding a payor’s formulary as long as nothing is designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

Section 4. Subsection (2) of section 465.025, Florida Statutes, is amended to read:

465.025 Substitution of drugs.—

(2) A pharmacist who receives a prescription for a brand name drug shall, unless requested otherwise by the purchaser, substitute a less expensive, generically equivalent drug product that is:

(a) Distributed by a business entity doing business, and subject to suit and service of legal process, in the United States; and

(b) Listed in the formulary of generic and brand name drug products as provided in subsection (5) for the brand name drug prescribed,

unless the prescriber writes the words “MEDICALLY NECESSARY,” in her or his own handwriting, on the face of a written prescription; ~~or~~ unless, in the case of an oral prescription, the prescriber expressly indicates to the pharmacist that the brand name drug prescribed is medically necessary; ~~or~~ unless, in the case of a prescription that is electronically generated and

transmitted, the prescriber makes an overt act when transmitting the prescription to indicate that the brand name drug prescribed is medically necessary. When done in conjunction with the electronic transmission of the prescription, the prescriber's overt act indicates to the pharmacist that the brand name drug prescribed is medically necessary.

Section 5. Paragraph (c) of subsection (7) of section 381.028, Florida Statutes, is amended to read:

381.028 Adverse medical incidents.—

(7) PRODUCTION OF RECORDS.—

(c)1. Fees charged by a health care facility for copies of records requested by a patient under s. 25, Art. X of the State Constitution may not exceed the reasonable and actual cost of complying with the request, including a reasonable charge for the staff time necessary to search for records and prevent the disclosure of the identity of any patient involved in the adverse medical incident through redaction or other means as required by the Health Insurance Portability and Accountability Act of 1996 or its implementing regulations. The health care facility may require payment, in full or in part, before acting on the records request.

2. Fees charged by a health care provider for copies of records requested by a patient under s. 25, Art. X of the State Constitution may not exceed the amount established under s. 456.057(18) ~~s. 456.057(16)~~, which may include a reasonable charge for the staff time necessary to prevent the disclosure of the identity of any patient involved in the adverse medical incident through redaction or other means as required by the Health Insurance Portability and Accountability Act of 1996 or its implementing regulations. The health care provider may require payment, in full or in part, before acting on the records request.

Section 6. This act shall take effect July 1, 2006.

Approved by the Governor June 22, 2006.

Filed in Office Secretary of State June 22, 2006.