

Committee Substitute for
Committee Substitute for Senate Bill No. 162

An act relating to electronic health records; amending s. 395.3025, F.S.; expanding access to a patient's health records in order to facilitate the exchange of data between certain health care facility personnel, practitioners, and providers and attending physicians; deleting the exemption that allows long-term ombudsman councils to have access to certain nursing home patient records; creating s. 408.051, F.S.; creating the "Florida Electronic Health Records Exchange Act"; providing definitions; authorizing the release of certain health records under emergency medical conditions without the consent of the patient or the patient representative; providing for immunity from civil liability; providing duties of the Agency for Health Care Administration with regard to the availability of specified information on the agency's Internet website; requiring the agency to develop and implement a universal patient authorization form in paper and electronic formats for the release of certain health records; providing procedures for use of the form; providing penalties; providing for certain compensation and attorney's fees and costs; creating s. 408.0512, F.S.; requiring the Agency for Health Care Administration to operate an electronic health record technology loan fund, subject to a specific appropriation; requiring the agency to adopt rules related to standard terms and conditions for the loan program; amending s. 409.916, F.S.; requiring that the agency deposit into the Grants and Donations Trust Fund private donations provided for the purpose of funding a certified electronic health record technology loan fund; amending s. 483.181, F.S.; expanding access to laboratory reports in order to facilitate the exchange of data between certain health care practitioners and providers; providing an effective date.

WHEREAS, the use of electronic health information technology has been proven to benefit consumers by increasing the quality and efficiency of health care delivery throughout the state, and

WHEREAS, clear and concise standards for sharing privacy-protected medical information among authorized health care providers will enable providers to have cost-effective access to the medical information needed to make sound decisions about health care, and

WHEREAS, maintaining the privacy and security of identifiable health records is essential to the adoption of procedures for sharing of electronic health records among health care providers involved in the treatment of patients, NOW, THEREFORE,

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

Section 1. Subsection (4) of section 395.3025, Florida Statutes, is amended to read:

395.3025 Patient and personnel records; copies; examination.—

(4) Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative ~~person to whom they pertain~~, but appropriate disclosure may be made without such consent to:

(a) Licensed facility personnel, and attending physicians, or other health care practitioners and providers currently involved in the care or treatment of the patient for use only in connection with the treatment of the patient.

(b) Licensed facility personnel only for administrative purposes or risk management and quality assurance functions.

(c) The agency, for purposes of health care cost containment.

(d) In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the patient or his or her legal representative.

(e) The agency upon subpoena issued pursuant to s. 456.071, but the records obtained thereby must be used solely for the purpose of the agency and the appropriate professional board in its investigation, prosecution, and appeal of disciplinary proceedings. If the agency requests copies of the records, the facility shall charge no more than its actual copying costs, including reasonable staff time. The records must be sealed and must not be available to the public pursuant to s. 119.07(1) or any other statute providing access to records, nor may they be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the agency or the appropriate regulatory board. However, the agency must make available, upon written request by a practitioner against whom probable cause has been found, any such records that form the basis of the determination of probable cause.

(f) The Department of Health or its agent, for the purpose of establishing and maintaining a trauma registry and for the purpose of ensuring that hospitals and trauma centers are in compliance with the standards and rules established under ss. 395.401, 395.4015, 395.4025, 395.404, 395.4045, and 395.405, and for the purpose of monitoring patient outcome at hospitals and trauma centers that provide trauma care services.

(g) The Department of Children and Family Services or its agent, for the purpose of investigations of cases of abuse, neglect, or exploitation of children or vulnerable adults.

~~(h) The State Long-Term Care Ombudsman Council and the local long-term care ombudsman councils, with respect to the records of a patient who has been admitted from a nursing home or long-term care facility, when the councils are conducting an investigation involving the patient as authorized under part II of chapter 400, upon presentation of identification as a council member by the person making the request. Disclosure under this paragraph shall only be made after a competent patient or the patient's representative has been advised that disclosure may be made and the patient has not objected.~~

~~(h)(i)~~ A local trauma agency or a regional trauma agency that performs quality assurance activities, ~~or a panel or committee assembled to assist a local trauma agency, or a regional trauma agency in performing quality assurance activities.~~ Patient records obtained under this paragraph are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(i)(j)~~ Organ procurement organizations, tissue banks, and eye banks required to conduct death records reviews pursuant to s. 395.2050.

~~(j)(k)~~ The Medicaid Fraud Control Unit in the Department of Legal Affairs pursuant to s. 409.920.

~~(k)(4)~~ The Department of Financial Services, or an agent, employee, or independent contractor of the department who is auditing for unclaimed property pursuant to chapter 717.

~~(l)(m)~~ A regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.

Section 2. Section 408.051, Florida Statutes, is created to read:

408.051 Florida Electronic Health Records Exchange Act.—

(1) SHORT TITLE.—This section may be cited as the “Florida Electronic Health Records Exchange Act.”

(2) DEFINITIONS.—As used in this section, the term:

(a) “Electronic health record” means a record of a person’s medical treatment which is created by a licensed health care provider and stored in an interoperable and accessible digital format.

(b) “Qualified electronic health record” means an electronic record of health-related information concerning an individual which includes patient demographic and clinical health information, such as medical history and problem lists, and which has the capacity to provide clinical decision support, to support physician order entry, to capture and query information relevant to health care quality, and to exchange electronic health information with, and integrate such information from, other sources.

(c) “Certified electronic health record technology” means a qualified electronic health record that is certified pursuant to s. 3001(c)(5) of the Public Health Service Act as meeting standards adopted under s. 3004 of such act which are applicable to the type of record involved, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals.

(d) “Health record” means any information, recorded in any form or medium, which relates to the past, present, or future health of an individual for the primary purpose of providing health care and health-related services.

(e) “Identifiable health record” means any health record that identifies the patient or with respect to which there is a reasonable basis to believe the information can be used to identify the patient.

(f) “Patient” means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

(g) “Patient representative” means a parent of a minor patient, a court-appointed guardian for the patient, a health care surrogate, or a person holding a power of attorney or notarized consent appropriately executed by the patient granting permission to a health care facility or health care provider to disclose the patient’s health care information to that person. In the case of a deceased patient, the term also means the personal representative of the estate of the deceased patient; the deceased patient’s surviving spouse, surviving parent, or surviving adult child; the parent or guardian of a surviving minor child of the deceased patient; the attorney for the patient’s surviving spouse, parent, or adult child; or the attorney for the parent or guardian of a surviving minor child.

(3) EMERGENCY RELEASE OF IDENTIFIABLE HEALTH RECORD.—A health care provider may release or access an identifiable health record of a patient without the patient’s consent for use in the treatment of the patient for an emergency medical condition, as defined in s. 395.002(8), when the health care provider is unable to obtain the patient’s consent or the consent of the patient representative due to the patient’s condition or the nature of the situation requiring immediate medical attention. A health care provider who in good faith releases or accesses an identifiable health record of a patient in any form or medium under this subsection is immune from civil liability for accessing or releasing an identifiable health record.

(4) UNIVERSAL PATIENT AUTHORIZATION FORM.—

(a) By July 1, 2010, the agency shall develop forms in both paper and electronic formats which may be used by a health care provider to document patient authorization for the use or release, in any form or medium, of an identifiable health record.

(b) The agency shall adopt by rule the authorization form and accompanying instructions and make the authorization form available on the agency’s website, pursuant to s. 408.05.

(c) A health care provider receiving an authorization form containing a request for the release of an identifiable health record shall accept the form as a valid authorization to release an identifiable health record. A health care provider may elect to accept the authorization form in either electronic or paper format or both. The individual or entity that submits the authorization form containing a request for the release of an identifiable health record shall determine which format is accepted by the health care provider prior to submitting the form.

(d) An individual or entity that submits a request for an identifiable health record is not required under this section to use the authorization form adopted and distributed by the agency.

(e) The exchange by a health care provider of an identifiable health record upon receipt of an authorization form completed and submitted in accordance with agency instructions creates a rebuttable presumption that the release of the identifiable health record was appropriate. A health care provider that releases an identifiable health record in reliance on the information provided to the health care provider on a properly completed authorization form does not violate any right of confidentiality and is immune from civil liability for accessing or releasing an identifiable health record under this subsection.

(f) A health care provider that exchanges an identifiable health record upon receipt of an authorization form shall not be deemed to have violated or waived any privilege protected under the statutory or common law of this state.

(5) PENALTIES.—A person who does any of the following may be liable to the patient or a health care provider that has released an identifiable health record in reliance on an authorization form presented to the health care provider by the person for compensatory damages caused by an unauthorized release, plus reasonable attorney's fees and costs:

(a) Forges a signature on an authorization form or materially alters the authorization form of another person without the person's authorization; or

(b) Obtains an authorization form or an identifiable health record of another person under false pretenses.

Section 3. Section 408.0512, Florida Statutes, is created to read:

408.0512 Electronic health records system adoption loan program.—

(1) Subject to the availability of eligible donations from public or private entities and funding made available through s. 3014 of the Public Health Service Act, the agency may operate a certified electronic health record technology loan fund subject to a specific appropriation as authorized by the General Appropriations Act or as provided through the provisions of s. 216.181(11)(a) and (b).

(2) The agency shall adopt rules related to standard terms and conditions for use in the loan program.

Section 4. Subsection (1) of section 409.916, Florida Statutes, is amended to read:

409.916 Grants and Donations Trust Fund.—

(1) The agency shall deposit any funds received from pharmaceutical manufacturers and all other funds received by the agency from any other person as the result of a Medicaid cost containment strategy, in the nature of a rebate, grant, or other similar mechanism into the Grants and Donations Trust Fund. The agency shall deposit any funds received from private donations for the purpose of funding a certified electronic health record technology loan fund into the Grants and Donations Trust Fund.

Section 5. Subsection (2) of section 483.181, Florida Statutes, is amended to read:

483.181 Acceptance, collection, identification, and examination of specimens.—

(2) The results of a test must be reported directly to the licensed practitioner or other authorized person who requested it, and appropriate disclosure may be made by the clinical laboratory without a patient's consent to other health care practitioners and providers involved in the care or treatment of the patient as specified in s. 456.057(7)(a). The report must include the name and address of the clinical laboratory in which the test was actually performed, unless the test was performed in a hospital laboratory and the report becomes an integral part of the hospital record.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor June 16, 2009.

Filed in Office Secretary of State June 16, 2009.