

Bill No. PCS for SB 938 (614830)

Barcode 491908

CHAMBER ACTION

Senate

House

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The Committee on Health Care (Saunders) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 381.028, Florida Statutes, is created to read:

381.028 Adverse medical incidents.--

(1) SHORT TITLE.--This section may be cited as the "Patients' Right-to-Know About Adverse Medical Incidents Act."

(2) PURPOSE.--It is the purpose of this act to implement s. 22, Art. X of the State Constitution. The Legislature finds that this section of the State Constitution is intended to grant patient access to records of adverse medical incidents, which records were made or received in the course of business by a health care facility or provider, and not to repeal or otherwise modify existing laws governing the use of these records and the information contained therein.

The Legislature further finds that all existing laws extending

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1 criminal and civil immunity to persons providing information  
 2 to quality-of-care committees or organizations and all  
 3 existing laws concerning the discoverability or admissibility  
 4 into evidence of records of an adverse medical incident in any  
 5 judicial or administrative proceeding remain in full force and  
 6 effect.

7 (3) DEFINITIONS.--As used in s. 22, Art. X of the  
 8 State Constitution and this act, the term:

9 (a) "Agency" means the Agency for Health Care  
 10 Administration.

11 (b) "Adverse medical incident" means medical  
 12 negligence, intentional misconduct, and any other act,  
 13 neglect, or default of a health care facility or health care  
 14 provider which caused or could have caused injury to or the  
 15 death of a patient, including, but not limited to, those  
 16 incidents that are required by state or federal law to be  
 17 reported to any governmental agency or body, incidents that  
 18 are reported to any governmental agency or body, and incidents  
 19 that are reported to or reviewed by any health care facility  
 20 peer review, risk management, quality assurance, credentials,  
 21 or similar committee or any representative of any such  
 22 committee.

23 (c) "Department" means the Department of Health.

24 (d) "Have access to any records" means, in addition to  
 25 any other procedure for producing such records provided by  
 26 general law, making the records available for inspection and  
 27 copying upon formal or informal request by the patient or a  
 28 representative of the patient, provided that current records  
 29 that have been made publicly available by publication or on  
 30 the Internet may be provided by reference to the location at  
 31 which the records are publicly available.

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1       (e) "Health care provider" means a physician licensed  
2 under chapter 458 or chapter 459.

3       (f) "Health care facility" means a facility licensed  
4 under chapter 395.

5       (g) "Identity" means any "individually identifiable  
6 health information" as defined by the Health Insurance  
7 Portability and Accountability Act of 1996 or its implementing  
8 regulations.

9       (h) "Patient" means an individual who has sought, is  
10 seeking, is undergoing, or has undergone care or treatment in  
11 a health care facility or by a health care provider.

12       (i) "Privacy restrictions imposed by federal law"  
13 means the provisions relating to the disclosure of information  
14 under federal law, including, but not limited to, the Health  
15 Insurance Portability and Accountability Act of 1996, Pub. L.  
16 No. 104-91 ("HIPAA") and its implementing regulations, and the  
17 Federal Privacy Act, 5 U.S.C. s. 552(a) and its implementing  
18 regulations, and any privilege, including, but not limited to,  
19 the attorney-client privilege, the attorney work-product  
20 privilege, or the self-critical analysis privilege, that has  
21 been recognized under federal law which would prohibit  
22 disclosure of information contained in the record.

23       (j) "Records" means the final report of any adverse  
24 medical incident. Medical records that are not the final  
25 report of any adverse medical incident, including drafts or  
26 other nonfinal versions; notes; and any documents or portions  
27 thereof which constitute, contain, or reflect any  
28 attorney-client communications or any attorney-client work  
29 product may not be considered "records" for purposes of s. 22,  
30 Art. X of the State Constitution and this act.

31       (k) "Representative of the patient" means a parent of

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1 a minor patient, a court-appointed guardian for the patient, a  
 2 health care surrogate, or a person holding a power of attorney  
 3 or notarized consent appropriately executed by the patient  
 4 granting permission to a health care facility or health care  
 5 provider to disclose the patient's health care information to  
 6 that person.

7 (4) PATIENTS' RIGHT OF ACCESS.--Patients have a right  
 8 to have access to any records made or received in the course  
 9 of business by a health care facility or health care provider  
 10 relating to any adverse medical incident. In providing access  
 11 to these records, the health care facility or health care  
 12 provider may not disclose the identity of patients involved in  
 13 the incidents and shall maintain any privacy restrictions  
 14 imposed by federal law.

15 (5) APPLICABILITY.--Section 22, Art. X of the State  
 16 Constitution applies to records created, incidents occurring,  
 17 and actions pending on or after November 3, 2004. Section 22,  
 18 Art. X of the State Constitution does not apply to records  
 19 created, incidents occurring, or actions pending before  
 20 November 3, 2004. A patient requesting records on or after  
 21 November 3, 2008, shall be eligible to receive records created  
 22 within 4 years before the date of the request.

23 (6) USE OF RECORDS.--

24 (a) This section does not repeal or otherwise alter  
 25 any existing restrictions on the discoverability or  
 26 admissibility of records relating to adverse medical incidents  
 27 otherwise provided by law, including, but not limited to,  
 28 those contained in ss. 395.0191, 395.0193, 395.0197, 766.101,  
 29 and 766.1016, or repeal or otherwise alter any immunity  
 30 provided to, or prohibition against compelling testimony by,  
 31 persons providing information or participating in any peer

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1 review panel, medical review committee, hospital committee, or  
2 other hospital board otherwise provided by law, including, but  
3 not limited to, ss. 395.0191, 395.0193, 766.101, and 766.1016.

4       (b) Except as otherwise provided by act of the  
5 Legislature, records of adverse medical incidents, including  
6 any information contained therein, obtained pursuant to s. 22,  
7 Art. X of the State Constitution, are not discoverable or  
8 admissible into evidence and may not be used for any purpose,  
9 including impeachment, in any civil or administrative action  
10 against a health care facility or health care provider. This  
11 includes information relating to performance or  
12 quality-improvement initiatives and information relating to  
13 the identity of reviewers, complainants, or any person  
14 providing information contained in or used in, or any person  
15 participating in the creation of the records of adverse  
16 medical incidents.

17       (7) PRODUCTION OF RECORDS.--

18       (a) Pursuant to s. 22, Art. X of the State  
19 Constitution, the adverse medical incident records to which a  
20 patient is granted access are those of the facility or  
21 provider of which he or she is a patient and which pertain to  
22 any adverse medical incident affecting the patient or any  
23 other patient which involves the same or substantially similar  
24 condition, treatment, or diagnosis as that of the patient  
25 requesting access.

26       (b)1. Using the process provided in s. 395.0197, the  
27 health care facility shall be responsible for identifying  
28 records as records of an adverse medical incident, as defined  
29 in s. 22, Art. X of the State Constitution.

30       2. Using the process provided in s. 458.351, the  
31 health care provider shall be responsible for identifying

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1 records as records of an adverse medical incident, as defined  
2 in s. 22, Art. X of the State Constitution, occurring in an  
3 office setting.

4       (c) 1. Fees charged by a health care facility for  
5 copies of records requested by a patient pursuant to s. 22,  
6 Art. X of the State Constitution may not exceed the reasonable  
7 and actual cost of complying with the request, including a  
8 reasonable charge for the staff time necessary to search for  
9 records and prevent the disclosure of the identity of any  
10 patient involved in the adverse medical incident through  
11 redaction or other means as required by the Health Insurance  
12 Portability and Accountability Act of 1996 or its implementing  
13 regulations. The health care facility may require payment, in  
14 full or in part, before acting on the records request.

15       2. Fees charged by a health care provider for copies  
16 of records requested by a patient pursuant to s. 22, Art. X of  
17 the State Constitution may not exceed the amount established  
18 pursuant to s. 456.057(16), which may include a reasonable  
19 charge for the staff time necessary to prevent the disclosure  
20 of the identity of any patient involved in the adverse medical  
21 incident through redaction or other means as required by the  
22 Health Insurance Portability and Accountability Act of 1996 or  
23 its implementing regulations. The health care provider may  
24 require payment, in full or in part, before acting on the  
25 records request.

26       (d)1. Requests for production of adverse medical  
27 incident records shall be processed by the health care  
28 facility or health care provider in a timely manner, after  
29 having a reasonable opportunity to determine whether or not  
30 the requested record is a record subject to disclosure and to  
31 prevent the disclosure of the identity of any patient involved

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1 in the adverse medical incident through redaction or other  
2 means.

3 2. A request for production of records must be  
4 submitted in writing and must identify the patient requesting  
5 access to the records by name, address, and the last four  
6 digits of the patient's social security number; describe the  
7 patient's condition, treatment, or diagnosis; and provide the  
8 name of the health care providers whose records are being  
9 sought.

10 (e) A patient receiving records involving any other  
11 patient pursuant to this section shall maintain the  
12 confidentiality of those records.

13 Section 2. This act shall take effect upon becoming a  
14 law.

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

18 And the title is amended as follows:

19 Delete everything before the enacting clause

21 and insert:

22 A bill to be entitled  
23 An act relating to adverse medical incidents;  
24 creating s. 381.028, F.S.; providing a short  
25 title; providing a purpose; defining terms;  
26 specifying patients' right of access to records  
27 relating to an adverse medical incident;  
28 prohibiting the disclosure of the identity of  
29 certain patients; providing for maintaining  
30 privacy restrictions imposed by federal law;  
31 providing for the applicability of s. 22, Art.

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1 X of the State Constitution; providing for  
2 applicability of this section; providing  
3 restrictions upon the use of such records;  
4 providing for the identification and production  
5 of the records; providing for fees charged for  
6 copies of records; requiring patients to  
7 maintain the confidentiality of records  
8 pertaining to another patient; providing an  
9 effective date.

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