

By Senator Flores

37-00284-13

2013228

1 A bill to be entitled
2 An act relating to presuit discovery in medical
3 negligence actions; amending s. 766.1065, F.S.;
4 revising the authorization form for release of
5 protected health information which clarifies that the
6 authorization only permits health care providers to
7 furnish copies of written and electronic medical
8 records; clarifying provisions in the authorization
9 form which relate to the use of the patient's health
10 information; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 766.1065, Florida Statutes, is amended
15 to read:

16 766.1065 Authorization for release of protected health
17 information.—

18 (1) Presuit notice of intent to initiate litigation for
19 medical negligence under s. 766.106(2) must be accompanied by an
20 authorization for release of protected health information in the
21 form specified by this section, authorizing the disclosure of
22 protected health information that is potentially relevant to the
23 claim of personal injury or wrongful death. The presuit notice
24 is void if this authorization does not accompany the presuit
25 notice and other materials required by s. 766.106(2).

26 (2) If the authorization required by this section is
27 revoked, the presuit notice under s. 766.106(2) is deemed
28 retroactively void from the date of issuance, and any tolling
29 effect that the presuit notice may have had on any applicable

37-00284-13

2013228

30 statute-of-limitations period is retroactively rendered void.

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

35
36 AUTHORIZATION FOR RELEASE OF
37 PROTECTED HEALTH INFORMATION
38

39 A. I, (...Name of patient or authorized
40 representative...) [hereinafter "Patient"], authorize
41 that (...Name of health care provider to whom the
42 presuit notice is directed...) and his/her/its
43 insurer(s), self-insurer(s), and attorney(s) may
44 obtain and disclose (within the parameters set out
45 below) the protected health information described
46 below for the following specific purposes:

47 1. Facilitating the investigation and evaluation
48 of the medical negligence claim described in the
49 accompanying presuit notice; or

50 2. Defending against any litigation arising out
51 of the medical negligence claim made on the basis of
52 the accompanying presuit notice.

53 B. This authorization only permits health care
54 providers to furnish copies of written and electronic
55 records. This authorization may not be construed to
56 allow a health care provider to have any other
57 communications, discussions, or conversations
58 regarding the Patient's health information.

37-00284-13

2013228

59 C. The health information authorized to be
60 obtained, used, or disclosed ~~extends to, and includes,~~
61 ~~the verbal as well as the written and is described as~~
62 follows:

63 1. The health information in the custody of the
64 following health care providers who have examined,
65 evaluated, or treated the Patient in connection with
66 injuries complained of after the alleged act of
67 negligence: (List the name and current address of all
68 health care providers). This authorization extends to
69 any additional health care providers that may in the
70 future evaluate, examine, or treat the Patient for the
71 injuries complained of.

72 2. The health information in the custody of the
73 following health care providers who have examined,
74 evaluated, or treated the Patient during a period
75 commencing 2 years before the incident that is the
76 basis of the accompanying presuit notice.

77
78 (List the name and current address of such health care
79 providers, if applicable.)

80
81 ~~D.C.~~ This authorization does not apply to the
82 following list of health care providers possessing
83 health care information about the Patient because the
84 Patient certifies that such health care information is
85 not potentially relevant to the claim of personal
86 injury or wrongful death that is the basis of the
87 accompanying presuit notice.

37-00284-13

2013228

88

89

90

91

92

93

94

95

96

97

98

99

100

101

102

103

104

105

106

107

108

109

110

111

112

113

114

115

116

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

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

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

2. Any liability insurer or self-insurer providing liability insurance coverage, self-insurance, or defense to any health care provider to whom presuit notice is given regarding the care and treatment of the Patient.

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

4. Any attorney (including secretarial, clerical, or paralegal staff) employed by or on behalf of (name of health care provider to whom presuit notice was given) regarding the matter of the presuit notice accompanying this authorization.

5. Any trier of the law or facts relating to any

37-00284-13

2013228

117 suit filed seeking damages arising out of the medical
118 care or treatment of the Patient as stated in the
119 presuit notice of intent to which this authorization
120 is attached.

121 F.E. This authorization expires upon resolution
122 of the claim or at the conclusion of any litigation
123 instituted in connection with the matter of the
124 presuit notice accompanying this authorization,
125 whichever occurs first.

126 G.F. The Patient understands that, without
127 exception, the Patient has the right to revoke this
128 authorization in writing. The Patient further
129 understands that the consequence of any such
130 revocation is that the presuit notice under s.
131 766.106(2), Florida Statutes, is deemed retroactively
132 void from the date of issuance, and any tolling effect
133 that the presuit notice may have had on any applicable
134 statute-of-limitations period is retroactively
135 rendered void.

136 H.G. The Patient understands that signing this
137 authorization is not a condition for continued
138 treatment, payment, enrollment, or eligibility for
139 health plan benefits.

140 I.H. The Patient understands that information
141 used or disclosed under this authorization may be
142 subject to additional disclosure by the recipient and
143 may not be protected by federal HIPAA privacy
144 regulations.

145

37-00284-13

2013228__

146 Signature of Patient/Representative:
147 Date:
148 Name of Patient/Representative:
149 Description of Representative's Authority:
150 Section 2. This act shall take effect upon becoming a law.