

By Senator Klein

28-1651-98

1 A bill to be entitled
 2 An act relating to public records and meetings;
 3 amending s. 394.923, F.S.; providing an
 4 exemption from public records requirements for
 5 the results of background screening of
 6 direct-care employees in mental health partial
 7 hospitalization programs; amending s. 394.932,
 8 F.S.; providing an exemption from public
 9 records requirements for records of quality
 10 assurance programs for mental health partial
 11 hospitalization programs; providing an
 12 exemption from public meetings requirements for
 13 meetings of quality assurance program
 14 committees of such hospitalization programs;
 15 creating s. 394.934, F.S.; providing an
 16 exemption from public records requirements for
 17 clinical records pertaining to mental health
 18 partial hospitalization; providing for future
 19 review and repeal of these exemptions, unless
 20 reenacted by the Legislature; providing a
 21 statement of public necessity for each
 22 exemption created under this act; providing a
 23 contingent effective date.

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

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 27 Section 1. Subsection (1) of section 394.923, Florida
 28 Statutes, as created by section 4 of SB , 1998 Regular
 29 Session, is amended to read:

30 394.923 Background screening.--

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1 (1)(a) The owner or operator of a facility that
2 provides mental health partial hospitalization services shall
3 conduct level 1 background screening, including
4 criminal-history record checks and abuse-registry checks, on
5 all direct-care employees in accordance with chapter 435.
6 Background-screening forms provided by the agency must be used
7 for this purpose.

8 (b) Pursuant to chapter 435, an employee may not be
9 retained if the employee is not of suitable character or
10 competency as indicated by the results of the criminal-history
11 record check or abuse-registry check conducted in connection
12 with the background screening. The agency may exempt an
13 individual from disqualification for employment in accordance
14 with chapter 435.

15 (c) The results of any background screening on
16 direct-care employees must be kept confidential and are exempt
17 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
18 the State Constitution; must be maintained in a separate
19 confidential file in the facility; and must be made available
20 for agency review upon request by the agency. The exemption
21 provided in this paragraph is subject to the Open Government
22 Sunset Review Act of 1995, in accordance with s. 119.15, and
23 shall stand repealed on October 2, 2003, unless reviewed and
24 saved from repeal through reenactment by the Legislature.

25 Section 2. Section 394.932, Florida Statutes, as
26 created by section 13 of SB , 1998 Regular Session, is
27 amended to read:

28 394.932 Access to records.--

29 (1) The agency has access to all records necessary to
30 determine agency compliance with ss. 394.92-394.938.

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1 (2)(a) The records of quality assurance programs which
2 relate solely to actions taken in carrying out ss.
3 394.92-394.938 and records obtained by the agency in
4 connection with determining compliance with those sections are
5 confidential and exempt from the provisions of s. 119.07(1)
6 and s. 24(a), Art. I of the State Constitution. Such records
7 are inadmissible in any civil or administrative action, except
8 in disciplinary proceedings by the agency or the Department of
9 Health and the appropriate regulatory board, nor may such
10 records be made available to the public as part of the record
11 of investigation for, and prosecution in, disciplinary
12 proceedings made available to the public by the agency or the
13 Department of Health or the appropriate regulatory board. The
14 exemption created under this paragraph is subject to the Open
15 Government Sunset Review Act of 1995, in accordance with s.
16 119.15, and shall stand repealed on October 2, 2003, unless
17 reviewed and saved from repeal through reenactment by the
18 Legislature.

19 (b) Meetings or portions of meetings of quality
20 assurance program committees that relate solely to actions
21 taken to determine compliance with ss. 394.92-394.938 are
22 exempt from the provisions of s. 286.011 and s. 24(b), Art. I
23 of the State Constitution. The exemption created under this
24 paragraph is subject to the Open Government Sunset Review Act
25 of 1995, in accordance with s. 119.15, and shall stand
26 repealed on October 2, 2003, unless reviewed and saved from
27 repeal through reenactment by the Legislature.

28 Section 3. Section 394.934, Florida Statutes, is
29 created to read:

30 394.934 Clinical records; confidentiality.--Mental
31 health partial hospitalization programs shall comply fully

1 with all clinical records confidentiality provisions of part I
2 of this chapter.

3 Section 4. The exemption from public records provided
4 under section 394.923(1)(c), Florida Statutes, for the results
5 of background screening on direct-care employees is necessary
6 to protect the privacy of individuals who apply for employment
7 in mental health partial hospitalization programs and is also
8 necessary to reinforce the willingness of such applicants to
9 be candid in providing details about their backgrounds.

10 Section 5. The exemption from public records
11 requirements which is provided in section 394.932(2)(a),
12 Florida Statutes, and the exemption from public meetings
13 requirements which is provided in section 394.932(2)(b),
14 Florida Statutes, is a public necessity because it promotes
15 openness on the part of mental health partial hospitalization
16 programs in providing information that assists oversight
17 agencies in investigating and maintaining or improving the
18 quality of such programs.

19 Section 6. The exemption from public records
20 requirements which is provided in section 394.934, Florida
21 Statutes, is a public necessity because it is in accordance
22 with the patient-doctor privilege otherwise provided by law
23 for health records and for mental-health records and because
24 it observes patients' rights to privacy.

25 Section 7. This act shall take effect upon the
26 effective date of SB , 1998 Regular Session, which
27 establishes mental health partial hospitalization programs and
28 provides for their licensure and regulation.
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SENATE SUMMARY

Provides public records exemptions for materials relating to mental health partial hospitalization programs.
Provides a public meeting exemption for meetings of quality assurance committees of such hospitalization programs.