

STORAGE NAME: h0511.hcr

DATE: March 31, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE STANDARDS & REGULATORY REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 511

RELATING TO: Public Records

SPONSOR(S): Representative Rayson

STATUTE(S) AFFECTED: Creates a new, unnumbered section of the law

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE STANDARDS & REGULATORY REFORM
- (2) GOVERNMENTAL OPERATIONS
- (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill relates to exemptions from the public records laws. Specifically, it provides an exemption from the public records requirements for patient records held by statewide or district managed care ombudsman committees. Additionally, the names and identities of complainants involved in a complaint to a statewide or district managed care ombudsman committee is confidential and exempt as well as any problem identified by the ombudsman committee as a result of an investigation. Pursuant to section 24 of Article I of the State Constitution, this bill also provides a statement of public necessity for the exemption which focuses on the personal and private nature of medical treatment.

The exemptions in this bill are made subject to the open Government Sunset Review Act of 1995.

The bill should not have any fiscal impact on the state, local government, or private sector.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records. It provides that:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by the Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or the Constitution.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardized the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over

those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

According to the Office of the Attorney General, patient records are generally protected from disclosure. Pursuant to s. 119.07(3)(r) and (s), F.S., records of HMO patients obtained by the Agency for Health Care Administration or the Department of Insurance are currently exempt as public records. Other ombudsman committees such as the state and district long term care ombudsman council have access to patient records which are confidential and exempt from public disclosure.

There are no public disclosure exemption provisions under the current statutes for the managed care ombudsman committee.

Last year, the legislature considered an identical public records exemption bill as a companion to the bill that created these ombudsman committees. The bill that created the committees became law without the companion records exemption. Consequently, if the Agency for Health Care Administration provided patient records to an ombudsman committee, those medical records would become a public record.

B. EFFECT OF PROPOSED CHANGES:

This bill provides protection for patients who file complaints with the state and district managed care ombudsman committees. Complainants names and identities are made confidential and exempt as well as any problem identified by the ombudsman committee as a result of an investigation. However, identifying information can be released if the complainant provides written consent to have his or her name released, or a court of competent jurisdiction orders the name or identity of the complainant released. Additionally, patient records held by an ombudsman committee are made confidential and exempt. These exemptions should facilitate the filing and resolution of quality of care complaints.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. This bill increases the ability of the statewide and district ombudsman committees to provide assistance and resolve complaints of managed health care consumers. Without such an exemption, consumers may be reluctant to utilize the ombudsman committees due to inadequate provisions for the protection from public disclosure of medical records and information otherwise held confidential.

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(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill will encourage health care consumers to use these committees because medical records and other identifying information would be exempt from public disclosure.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1. Provides that patient records held by a statewide or district managed care ombudsman committee are confidential and exempt from the provisions of s. 119.07, F.S., and s. 24(a), Article I of the State Constitution. It also makes confidential and exempt the names or identities of the complainants involved in a complaint to the committees unless the complainants provide their written consent to have their names released or a court orders otherwise. Additionally, any problem identified by the ombudsman committee as a result of an investigation is confidential and exempt.

Section 2. This section provides legislative findings as to the public necessity for exemption records from the public records law. The Legislature finds that Floridians will benefit from the thorough investigation and prompt resolution of complaints regarding the quality of care provided by managed care programs. Due to the personal and private nature of patient records which form the basis of complaints, the Legislature finds that disclosure of such records would discourage complaints and undermine quality of care.

Section 3. Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

As noted, this bill exempts patient records held by the statewide or a district managed care ombudsman committee from the public records law. However, the bill does not exempt from the public meetings law those portions of committee meetings which discuss otherwise confidential matters. Consequently, heightened care must be exercised to not reveal identifying information and other confidential information when the committees conduct their public meetings.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

Prepared by:

Legislative Research Director:

Stanley H. Griffis

Robert W. "Bob" Coggins