

STORAGE NAME: H0605.hcr
DATE: March 18, 1997

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

BILL #: HB 605

RELATING TO: Public Records and Meetings

SPONSOR(S): Committee on Health Care Standards & Regulatory Reform and Representative Kelly

STATUTE(S) AFFECTED: Sections 455.225 and 455.261, F.S.

COMPANION BILL(S): SB 660(i), HB 329(c), SB 490(c)

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

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

I. SUMMARY:

The bill extends an exemption from the public records and meetings law (chapter 119, F.S. and Section 24(a), Article I of the State Constitution) to provisional psychologists, registered clinical social workers interns, registered mental health counselor interns, provisional marriage and family therapists and provisional mental health counselors. It takes effect upon adoption of legislation creating these categories of practitioners and revision of chapters 490 and 491, F.S.

The exemption pertains to exemptions of the public records law for probable cause panel meetings and investigative reports until ten days after probable cause is found or the subject waives confidentiality. Patient records or records which identify the patient's name remain confidential at all times.

The bill has no fiscal impact on the state, and no fiscal impact on local government and the private sector.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Public Records Law, chapter 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies. While the state constitution provides that records and meetings of public bodies are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, Florida Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation creating a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Florida Constitution, provides that any bill containing an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F.S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The next review cycle will begin in 2001. The chapter defines the term "substantial amendment" for purposes of initiating a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

Effective July 1, 1997, the regulation of various health care professions transfer from the Agency for Health Care Administration (AHCA) to the Department of Health (DOH), except the law imposes specific limitations on the transfer of specified functions. The law expressly transfers to the DOH specific regulatory functions relating to the health professions including all licensing, examination, publication, administrative, and management information services, but requires the DOH to contract with AHCA for the provision of consumer complaint, investigative, and prosecutorial services.

Chapter 455, F.S., provides the general regulatory provisions for professions regulated by the Department of Business and Professional Regulation (DBPR) and AHCA. Section 455.225, F.S., provides procedures for disciplinary proceedings against professions under the department's and agency's regulatory jurisdiction. Section 455.225, F.S., provides that complaints and information obtained by the DBPR and AHCA during their investigations are exempt from the public records law until 10 days after probable cause has been found to exist by the probable cause panel of the appropriate board, the department or agency, or until the subject of the investigation waives confidentiality.

Section 455.261, F.S., requires AHCA to retain one or more impaired practitioner consultants to administer and implement the impaired practitioner program. The section requires the consultant to be a licensed practitioner or recovered practitioner under the agency's jurisdiction and at least one of the consultants must be a medical physician,

osteopathic physician, or nurse. The consultant works closely with approved treatment providers regarding intervention, evaluation, and treatment of impaired practitioners participating in the program. An approved treatment provider is required, upon request, to disclose to the consultant all information in its possession regarding an impaired practitioner's impairment and participation in the program.

Section 455.261, F.S., provides that this treatment information maintained by AHCA or DBPR, as appropriate, or the consultant as the agency's agent, is confidential and exempt from the public records law. If in the opinion of the consultant, after consultation with the treatment provider, the impaired practitioner fails to satisfactorily progress in a treatment program, all information regarding the practitioner's impairment and participation in the treatment program must be disclosed to the agency. The disclosure constitutes a disciplinary complaint, which remains confidential until probable cause is found that the licensee has violated regulations applicable to the practice of the licensee's profession.

Chapter 490, F.S., provides for the regulation of psychologists and school psychologists by the Board of Psychology within AHCA. Chapter 491, F.S., provides for the regulation of psychotherapists by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling within AHCA.

Interns and provisional licensees of chapters 490 and 491, F.S., are not currently regulated.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that existing public records and meetings law exemptions to chapter 119, F.S., and the State Constitution for information concerning participation in the impaired practitioner treatment program, disciplinary complaints, and related investigative information, and the proceedings of the probable cause panel for health care professionals under the regulatory jurisdiction of AHCA and DOH are extended to also apply to provisionally licensed psychologists under chapter 490, F.S., registered clinical social workers, registered marriage and family therapist interns, registered mental health counselor interns, and provisionally licensed clinical social workers, marriage and family therapists, and mental health counselors under chapter 491, F.S. This legislation provides findings of public necessity to justify the exemptions.

The bill provides an effective date that is contingent upon similar legislation revising chapters 490 and 491, F.S., to create provisional licensing categories and intern registration of psychologists and psychotherapists.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

STORAGE NAME: H0605.hcr

DATE: March 18, 1997

PAGE 4

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

No.

(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. This bill limits the amount of public information in making a decision on choosing a health care provider.

- 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?

N/A

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:

N/A

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates new law adding provisional licensees and interns in psychology, mental health, clinical social work, marriage and family therapists, and mental health counselors to the exemptions of the public records laws currently provided other health care licensees of the Department of Health.

Section 2. Subsections 455.225(2), (4), (10), F.S., regarding disciplinary proceedings have no change.

Section 3. Section 455.261(3)(e) and (5)(a), F.S., regarding treatment programs for impaired practitioners has no change.

Section 4. Creates new law providing confidentiality to investigations of practitioners licensed and regulated under chapters 490 and 491, F.S. This section does not provide

a specified time frame for the exemptions to the public meetings law for the provisional licensees and interns in that it states "for a certain period from the public meetings law."

Section 5. Provides that this act shall take effect upon the same date as HB 329 or similar legislation revising chapters 490 and 491, F.S., to create these new categories of (provisional and intern) practitioners.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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:

None.

2. Direct Private Sector Benefits:

None.

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

None.

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:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM

Prepared by:

Legislative Research Director:

Terri L. Paddon

Robert W. Coggins

STORAGE NAME: H0605.hcr

DATE: March 18, 1997

PAGE 9