

STORAGE NAME: h1433.hcl

DATE: March 21, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS**

BILL #: HB 1433

RELATING TO: Public Records/EMTs/Paramedics

SPONSOR(S): Representative Casey

COMPANION BILL(S): SB 1810(i), HB 1431(c), and SB 1476(c)

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

- (1) HEALTH CARE LICENSING & REGULATION
 - (2) GOVERNMENTAL RULES & REGULATION
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 1433 establishes exemptions to the release of public records required in s. 119.07(1), F.S., and s. 24(a), Article 1 of the State Constitution, for Department of Health records relating to:

- ◆ impaired emergency medical technicians and paramedics;
- ◆ identifying information of students enrolled in emergency medical technician or paramedic education programs;
- ◆ complaint investigations of emergency medical services licensees; and
- ◆ hospital patient records shared by hospitals with emergency medical service providers.

The exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and are repealed October 2, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 1999, contingent upon passage of HB 1431, or other similar legislation becoming law.

The public records exemption bill has no fiscal impact on the Department of Health, local government or the private sector.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 401.414, F.S., requires the Department of Health to investigate legally sufficient complaints against emergency medical technicians, paramedics, and emergency medical service licensees. The complaint and all information obtained in the investigation are exempt from the public records release requirements of s. 119.07(1), F.S., and s. 24, Article 1 of the State Constitution until 10 days after probable cause has been found by the department or the subject of the complaint waives confidentiality.

There is no provision in Chapter 401, F.S., to protect the identity of students enrolled in emergency medical technician and paramedic education programs.

Section 401.411, F.S., establishes disciplinary action for specified grounds, including operating as an emergency medical technician or paramedic without reasonable skill and safety to patients by reason of drunkenness or the use of drugs, narcotics, chemicals, or any other substance. There is no provision in Chapter 401, F.S., for the Department of Health to mitigate complaints of impairment.

Section 395.3025, F.S., establishes the confidentiality requirements for hospital patient records and provides for the limited disclosure of these records to specified entities without the patient's consent. The specified entities do not include emergency medical service licensees.

Florida Public Records Law

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records in providing 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 this 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 this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of subsection (a). 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(1), F.S., provides that:

- (1)(a) 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 or 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 Florida 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. It 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. It protects information of a sensitive 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 jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. It 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.

Emergency Medical Services' Records

Section 401.30, F.S., provides for records of emergency calls to be available for inspection by the department at any reasonable time. Reports to the department from licensees which cover statistical data are public records, except that the names of patients and other patient-identifying information are confidential and exempt. Records of emergency calls which contain patient examination or treatment information are confidential and exempt and may not be disclosed without the consent of the person to whom they pertain; however, limited disclosure may be made without consent.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

B. EFFECT OF PROPOSED CHANGES:

HB 1433 establishes exemptions to the release of public records required in s. 119.07(1), F.S., and s. 24(a), Article 1 of the State Constitution, for Department of Health records relating to:

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The exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and are repealed October 2, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

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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?

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?

N/A

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

Yes. The bill exempts information from public disclosure.

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:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

None.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Exempts from the public records information alleging impairment on the part of an emergency medical technician or paramedic against whom no other complaint has been filed. Exempts from the public records information concerning an emergency medical technician's or paramedic's enrollment in, progress through, and completion of an impairment treatment program.

Section 2. Exempts from the public records information identifying students in emergency medical technician or paramedic education courses.

Section 3. Exempts from the public records a complaint against medical services licensees until 10 days after probable cause has been found or the licensee waives confidentiality.

Section 4. Exempts from the public records information released to an emergency medical services licensee by a hospital about a hospital patient who was transported or treated, or both, by the licensee.

Section 5. Provides for repeal on October 2, 2004, pursuant to the Open Government Sunset Review Act, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 6. Provides findings of public necessity for impaired practitioners, students in educational programs, emergency medical service licensees, and to hospital patients who have been transported or treated.

Section 7. Provides an effective date of July 1, 1999, contingent upon passage of legislation regulating licensure of emergency medical services licensees, emergency medical technicians, and paramedics, becomes law.

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:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

STORAGE NAME: h1433.hcl

DATE: March 21, 1999

PAGE 7

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 LICENSING & REGULATION:

Prepared by:

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