

STORAGE NAME: h1843.go

DATE: April 1, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1843 (PCB HCL 99-06)

RELATING TO: Public Records/Reports of Adverse Incidents

SPONSOR(S): Committee on Health Care Licensing & Regulation, Rep. Fasano and others

COMPANION BILL(S): HB 1847 (compare), CS/SB 1348 (compare), and SB 1824 (compare)

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 11 NAYS 0
- (2) JUDICIARY YEAS 8 NAYS 0
- (3) GOVERNMENTAL OPERATIONS
- (4)
- (5)

I. SUMMARY:

HB 1843 creates a public records exemption for reports on adverse incidents filed by physicians licensed pursuant to chs. 458 and 459. HB 1843 requires adverse incident reports to be filed by medical and osteopathic physicians relative to incidents occurring in a physician's office. "Adverse incidents" are incidents which result in death of a patient, brain or spinal damage, performance of a surgical procedure on the wrong patient, performance of a wrong-site surgical procedure; and performance of a wrong surgical procedure, for example.

The bill provides that such reports are confidential and exempt from s. 119.07 (1), F.S., and s. 24(a), Art. I of the Florida Constitution. In addition, such records when filed with the Department of Health are not discoverable or admissible in a civil or administrative action, unless the action is a disciplinary proceeding by the department or the respective board.

A public necessity statement is provided for these exemptions as required by s. 24(a), Art. I of the Florida Constitution.

These exemptions are subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2004.

There is no fiscal impact on the state, local government or the private sector.

The effective date of this bill is contingent on the enactment of legislation which creates ss. 458.351 and 459.026, F.S.

Note. On March 30, 1999, the Committee on Judiciary adopted three amendments which are traveling with the bill. The first amendment adds an exemption from the public records laws for information obtained pursuant to s. 455.565 (1)(a)8., F.S., regarding final disciplinary action taken by a licensed hospital or ambulatory surgical center. The second amendment adds language to the public necessity statement regarding information relating to hospital and ambulatory surgical center disciplinary actions. The third amendment adds language to the title of the bill regarding the additional exemption.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

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, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure 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., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. 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 that such purpose 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 jeopardize 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.

Adverse Incident Reports

Currently, s. 395.0198, F.S., requires the reporting of all adverse incidents that occur in facilities licensed pursuant to Ch. 395 (mainly hospitals and ambulatory surgery centers). However, there is no requirement for physicians licensed pursuant to chs. 458 or 459, F.S., to file reports of adverse incidents that occur during surgery performed in their offices. The report is filed with the Agency for Health Care Administration with the information available to the Department of Health to determine if disciplinary action is required against a licensee of the department.

Licensees are required to report incidents resulting in one of the following: death of a patient; brain or spinal damage; performance of a surgical procedure on the wrong patient; performance of a wrong-site

surgical procedure; performance of a wrong surgical procedure; and performance of a medically unnecessary procedure, and certain other procedures.

The filed reports are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. In addition, the information is not discoverable or admissible in a civil or administrative action, unless the action is a disciplinary proceeding by the department or appropriate regulatory board.

B. EFFECT OF PROPOSED CHANGES:

The bill creates ss. 458.353 and 459.028, F.S., relating to adverse incident reports filed by medical and osteopathic physicians relative to incidents occurring in a physician's office. It provides that such reports are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. In addition, such records when filed with the Department of Health are not discoverable or admissible in a civil or administrative action, unless the action is a disciplinary proceeding by the department or the respective board.

The bill includes the required statement of public necessity. The Legislature finds that these exemptions are a public necessity and that it would be an invasion of a patient's privacy for such personal, sensitive information contained in these reports to be publicly available. Moreover, allowing such records to be public may deter licensees from reporting adverse incidents, thereby limiting the ability of state agencies to effectively carry out their responsibility to protect the health, safety, and welfare of the public by regulation of healthcare licensees.

These exemptions are subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2004.

This bill accompanies HB 1847 which requires the filing of reports on adverse incidents by physicians licensed under Chapters 458 or 459.

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?

Yes. Individuals would not have access to certain public records.

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

The bill does not affect an agency or program.

(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?

Yes. Individuals would not have access to certain public records.

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

No.

4. Individual Freedom:

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

No.

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

Yes. Individuals would not have access to certain public records.

5. Family Empowerment:

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

The bill does not purport 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:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates sections 458.353 and 459.028, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 458.353, F.S., to provide a public records exemption for adverse incident reports filed by medical physicians. It provides that such reports are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the Florida Constitution. In addition, such records, when filed with the Department of Health, are not discoverable or admissible in a civil or administrative action, unless the action is a disciplinary proceeding by the department or the respective board.

These exemptions are subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2004.

Section 2. Creates s. 459.028, F.S., to provide a public records exemption for adverse incident reports filed by osteopathic physicians. It provides that such reports are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the Florida Constitution. In addition, such records, when filed with the

Department of Health, are not discoverable or admissible in a civil or administrative action, unless the action is a disciplinary proceeding by the department or the respective board.

These exemptions are subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2004.

Section 3. Includes the required statement of public necessity. The justification for the exemptions from the public records law provided in ss. 458.323 and 459.028, Florida Statutes, is the fact that the Legislature finds that these exemptions are a public necessity, and that it would be an invasion of a patient's privacy for such personal, sensitive information contained in these reports to be publicly available.

Section 4. Provides an effective date on the same date that legislation which creates ss. 458.351 and 459.026, F.S., takes effect.

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:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

The Legislature finds that these exemptions are a public necessity, and that it would be an invasion of a patient's privacy for such personal, sensitive information contained in these reports to be publicly available. The bill would benefit the private sector by allowing the state to better regulate those

licensees that are involved in adverse incidents, thereby fostering improved medical care for consumers in Florida.

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:

The bill does not require a city or county to spend funds or to take any 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:

On March 30, 1999, the Committee on Judiciary adopted three amendments which are traveling with the bill. The first amendment adds an exemption from the public records laws for information obtained pursuant to s. 455.565 (1)(a)8., F.S., regarding final disciplinary action taken by a licensed hospital or ambulatory surgical center. The second amendment adds language to the public necessity statement regarding information relating to hospital and ambulatory surgical center disciplinary actions. The third amendment adds language to the title of the bill regarding the additional exemption.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Robert W. Coggins

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson

Don Rubottom

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AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:
Prepared by: Staff Director:

Douglas Pile

Jimmy O. Helms