

**STORAGE NAME:** h1843a.jud

**DATE:** March 31, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
JUDICIARY  
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(c), CS/SB 1348(c), and SB 1824(c)

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 11 NAYS 0
  - (2) JUDICIARY YEAS 8 NAYS 0
  - (3)
  - (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) 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These exemptions are subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2004.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 bill's effective date is contingent on the effective date of HB 1847.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, provide for public access to any records produced or obtained by a government agency. However, it permits the Legislature to provide by general law for the exemption of certain records. The general law exempting the records must state with specificity the public necessity justifying the exemption.

Currently, 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. However, 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). 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.

Licensee 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.

These reports that are filed 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:

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) 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.

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?

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?

The bill does not affect an agency or program.

- (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?

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?

No.

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

- (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?

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

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

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 HB 1847 or similar legislation 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:

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None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted three amendments which are traveling with the bill. The first amendment exempts information obtained pursuant to s. 455.565(1)(a)8, regarding final disciplinary action taken by a licensed hospital or ambulatory surgical center from Chapter 119 (the public records law). The second amendment includes information relating to hospital and ambulatory surgical center disciplinary actions in the exemption from Chapter 119, F.S. The third amendment is a title amendment.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

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