

STORAGE NAME: h1741a.go
DATE: April 17, 2000

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

BILL #: HB 1741
RELATING TO: Public Records Exemptions for Nurses
SPONSOR(S): Representative Boyd
TIED BILL(S): CS/HB 567 and HB 1659

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 13 NAYS 0
 - (2) CORRECTIONS YEAS 7 NAYS 0
 - (3) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates s. 119.07(3)(dd), F.S., which provides exemptions from public records requirements for the home addresses and home telephone numbers of nurses who work in correctional or mental health facilities. The bill does not state which agency is holding the records to be exempt under this provision. The bill also does not subject this exemption to s. 119.15, F.S., the Open Government Sunset Review Act of 1995.

This bill also provides a separate exemption from public records requirements for information obtained *for practitioner profiles* of advanced registered nurse practitioners.

This bill further provides findings of public necessity for the two new exemptions. HB 1741 will protect the safety and well-being of the nurse and their family members while in their own home from inmates or clients who might seek this information for the purpose of stalking, intimidating, harassing, or otherwise threatening or harming the nurses or their family member.

The Legislature finds that this bill is necessary to accomplish the goals of CS/HB 567 to profile advanced registered nurse practitioners. CS/HB 567 attempts to add advanced registered nurse practitioners to the list of health care practitioners to be profiled, the public records exemption currently found in s. 455.5656, F.S., should be modified as well.

This bill also amends s. 455.5656, F.S., to provide for the review and repeal of this exemption pursuant to s. 119.15, F.S., the Open Government Sunset Review Act of 1995.

This bill does not appear to have a fiscal impact on state or local governments.

The bill provides for an effective date of July 1, 2000, contingent upon passage of CS/HB 567 or similar legislation.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

This bill would restrict public access to certain personal information relating to nurses working in correctional or mental health facilities, which is currently available under the Public Records Law. The public record exemption of certain personal information would protect these persons from potential harassment by individuals, such as inmates, who may desire the personal information for that purpose.

The beneficiaries of this legislation are those specified nurses who would have certain personal information exempted from the Public Records Law. They will not pay any costs relating to the implementation of this legislation.

B. 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 1, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from requirements. The general law which exempts records from public disclosure must: state with specificity the public necessity justifying the exemption; can be no broader than necessary to accomplish the stated purpose of the law; and may only contain exemptions.

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.

Current Public Record Law Regarding Health Practitioners

The home addresses and home telephone numbers of nurses and other health care practitioners are currently public records if they have been provided by the practitioner to the Department of Health. Practitioners are required by s. 455.717, F.S., to provide the department with their current mailing address and place of practice. Oftentimes, practitioners provide their home address to the department as their mailing address so they can personally receive critical licensure renewal information from the department. By doing so, they are making their home address and phone number available to the public. In the past, these practitioners have requested an unlisted telephone number from the telephone companies which keeps this personal information out of most telephone directories and out of the hands of convicted criminals who might use this information to harm the practitioner or otherwise threaten or harass the practitioner or his or her family. The criminal rarely contacted or knew to contact the Department of Health to request this personal information. However, this information is now available for physicians via the internet even if the practitioner had requested an unlisted number from the telephone company. There is no current protection of the home address and home telephone number of health care practitioners who agree to work in correctional or mental health facilities since they do not fall within the category of existing public records exemptions. Law enforcement personnel, including correctional officers, victims of crimes, prosecutors, and judges are currently afforded this protection and more under s. 119.07(3), F.S.

Patient medical records are currently protected from disclosure and release by s. 455.667, F.S., while in the custody and under control of a health care practitioner. That section provides for limited disclosure to the Department of Health for certain purposes. The

profiling laws, ss. 455.565-455.5656, F.S., require practitioners who are being profiled to report information to the Department of Health in addition to the provisions of s. 455.667, F.S. When the law passed in 1997 requiring physicians to be profiled, the Legislature recognized the need to maintain the confidentiality of patient medical records and enacted a public records exemption in s. 455.5656, F.S. If the public records exemption currently found in s. 455.5656, F.S., is not expanded accordingly, the additional patient medical records that could be included with the materials the practitioner must submit to the Department of Health will be open to the public. Patients expect their medical records to be kept confidential from the public so they are not harassed, humiliated, or discriminated against. The patient-practitioner relationship is based upon trust and the knowledge that diagnoses, treatment, prognoses, and other medical information will remain confidential and exempt from disclosure to the public.

C. EFFECT OF PROPOSED CHANGES:

This bill provides that these public records exemptions are necessary to accomplish the goals of CS/HB 567 with regard to profiling advanced registered nurse practitioners while maintaining the confidentiality of patient medical records, and protecting nurses working in correctional or mental health facilities from harm.¹

Currently, public records exemptions exist for certain correctional staff. HB 1741 would extend public records exemptions to include nurses in correctional facilities. Additionally, this bill proposes to extend public records exemption to nurses who are employed at psychiatric facilities. However, the bill does not state who, exactly, holds the records to be exempt, whether it is the Department of Health and the Department of Corrections, or all agencies.

There are two types of public records exempted by this bill related to profiling of advanced registered nurse practitioners which is the process of requiring health care practitioners to self-disclose a wealth of information to the Department of Health which had never been collected before and to undergo national criminal background checks. The first exemption relates to home addresses and home telephone numbers of nurses who work in correctional or mental health facilities. This bill protects the safety and well-being of the nurse and their family members while in their own home from inmates or clients who might seek this information for the purpose of stalking, intimidating, harassing, or otherwise threatening or harming such nurse or his or her family member. The elimination of disclosure of this information on the practitioner profiles or through other public records request will eliminate the deterrent effect on qualified health care practitioners willing to work in these settings. The bill does not make this exemption subject to the Open Government Sunset Review Act of 1995, s. 119.15, F.S. However, because one legislature cannot bind another, making the exemption subject to s. 119.15, F.S., is not required, only part of current legislative practice.

The second exemption relates to medical records and other information that must be submitted to the department which contains confidential information about a patient's medical history, treatment, or current condition and which identifies a patient by name or other identifier. This bill would keep patient medical records confidential and exempt from disclosure to the public.

¹ Staff consultation with the Florida Board of Nursing confirmed the intent of the bill to be the inclusion of pertinent information about nurses employed at jails, prisons and any psychiatric facility in the exemption as public record.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Adds s. 119.07(3)(dd), F.S., to exempt the home addresses and home telephone numbers of health care practitioners working in correctional or mental health facilities from disclosure to the public.

Section 2. Provides public necessity for public records exemption.

Section 3. Amends s. 455.5656, F.S., to clarify that the public records exemption with regard to physicians profiled pursuant to s. 455.565, F.S., remains subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature. Provides that the public records exemption with regard to all other practitioners profiled pursuant to s. 455.56503, F.S., as created by HB 1659, is subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Provides public necessity for public records exemption.

Section 5. Provides that this bill shall take effect on the effective date of CS/HB 567 (July 1, 2000) or similar legislation creating s. 455.56503, F.S., to provide for the confidentiality of information obtained for practitioner profiles of advanced registered nurse practitioners, if such legislation is adopted in the same legislative session or an extension thereof.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 expend 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 state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

See Present Situation.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

This bill provides a public records exemption for nurses working in any "mental health facility". This phrase is not defined in Part II of Chapter 455 and may result in a large number of addresses being unavailable to the public. If the exemption is overboard, it may be subject to legal challenge.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 17, 2000, the Committee on Governmental Operations heard this bill and adopted two amendments. The first amendment gave a definition for "facility" as provided in s. 394.455(10), F.S., under the "Mental Health Act." The second amendment corrected a statutory reference. The bill was reported favorably as amended.

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VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

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AS REVISED BY THE COMMITTEE ON CORRECTIONS:

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