

1 A bill to be entitled
2 An act relating to public records and meetings;
3 providing an exemption from the public records
4 law for certain records relating to internal
5 risk management programs in nursing homes and
6 assisted living facilities; providing for
7 release of such information under certain
8 circumstances; providing an exemption from the
9 public meetings law for meetings of internal
10 risk management and quality assurance
11 committees in nursing homes and assisted living
12 facilities; providing for future legislative
13 review and repeal; providing a statement of
14 public necessity; creating s. 430.105, F.S.;
15 providing for confidentiality and exemption
16 from the public records law for information
17 relating to clients of the Department of
18 Elderly Affairs, clients of service providers
19 contracting with the Department of Elderly
20 Affairs, and certain elders receiving services
21 through programs administered by or funded by
22 the Department of Elderly Affairs; requiring
23 consent for disclosure; providing for future
24 legislative review and repeal; providing a
25 statement of public necessity; providing a
26 contingent effective date.

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28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Confidentiality of records and meetings of
31 risk management and quality assurance committees.--

1 (1) Records of meetings of the risk management and
2 quality assurance committee of a long-term care facility
3 licensed under part II or part III of chapter 400, Florida
4 Statutes, as well as incident reports filed with the
5 facility's risk manager and administrator, notifications of
6 the occurrence of an adverse incident, and adverse incident
7 reports from the facility are confidential and exempt from s.
8 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State
9 Constitution. However, if the Agency for Health Care
10 Administration has a reasonable belief that conduct by a staff
11 member or employee of a facility is criminal activity or
12 grounds for disciplinary action by a regulatory board, the
13 agency may disclose such records to the appropriate law
14 enforcement agency or regulatory board. Residents who are the
15 subject of or identified in incident reports or other related
16 records shall be entitled to receive a copy of those documents
17 upon request.

18 (2) Records that are confidential and exempt under
19 subsection (1) and that are obtained by a regulatory board are
20 not available to the public as part of the record of
21 investigation and prosecution in a disciplinary proceeding
22 made available to the public by the agency or the appropriate
23 regulatory board. However, the agency or the appropriate
24 regulatory board shall make available, upon request by a
25 health care professional against whom probable cause has been
26 found, any such records that form the basis of the
27 determination of probable cause.

28 (3) Records disclosed to a law enforcement agency
29 pursuant to subsection (1) remain confidential and exempt
30 until criminal charges are filed.

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1 (4) The meetings of an internal risk management and
2 quality assurance committee of a long-term care facility
3 licensed under part II or part III of chapter 400, Florida
4 Statutes, are exempt from s. 286.011, Florida Statutes, and s.
5 24(b), Art. I of the State Constitution and are not open to
6 the public.

7 (5) This section is subject to the Open Government
8 Sunset Review Act of 1995 in accordance with s. 119.15,
9 Florida Statutes, and shall stand repealed on October 2, 2006,
10 unless reviewed and saved from repeal through reenactment by
11 the Legislature.

12 Section 2. The Legislature finds that it is a public
13 necessity that information pertaining to the operation of
14 internal risk management and quality assurance programs in
15 long-term care facilities licensed under part II or part III
16 of chapter 400, Florida Statutes, be confidential and exempt
17 from public records requirements, and that meetings of quality
18 assurance committees be closed to the public. The Legislature
19 finds that it is in the interest of public health and safety
20 to require long-term care facilities to operate internal risk
21 management programs and for the Agency for Health Care
22 Administration to review the operation of these programs. The
23 Legislature finds that these programs are effective in
24 reducing risk to residents and improving quality when facility
25 staff have frank and open internal communication regarding
26 potential resident risks and quality assurance problems and
27 that public access to these discussions or agency records of
28 these discussions will inhibit this frank and open internal
29 communication.

30 Section 3. Section 430.105, Florida Statutes, is
31 created to read:

1 430.105 Confidentiality of information.--
2 (1) Information, including personally identifying
3 information contained in records relating to an individual's
4 health or eligibility for or receipt of health-related, elder
5 care, or long-term care services, about clients of the
6 department, clients of service providers that contract with
7 the department, or functionally impaired elderly persons who
8 receive services under any program administered or funded by
9 the department is confidential and exempt from the provisions
10 of s. 119.07(1) and s. 24(a), Art. I of the State
11 Constitution, except as otherwise provided by law. Such
12 information may be contained in records created by or received
13 by the department or its service providers or obtained through
14 files, reports, inspections, or otherwise by employees of the
15 department, persons who volunteer through programs
16 administered by the department or its contract providers, or
17 by contract providers. Information made confidential and
18 exempt from the public records law under this section may not
19 be disclosed publicly unless the affected client or elder
20 person or his or her legal representative provides written
21 consent.

22 (2) This section is subject to the Open Government
23 Sunset Review Act of 1995 in accordance with s. 119.15, and
24 shall stand repealed on October 2, 2006, unless reviewed and
25 saved from repeal through reenactment by the Legislature.

26 Section 4. The Legislature finds that it is a public
27 necessity that identifying information and information of a
28 personal and sensitive nature that is contained in the records
29 of elderly persons collected and held by the Department of
30 Elderly Affairs, by volunteers, by persons under contract with
31 area agencies on aging, or any provider contracting with the

1 department to provide services to clients of the department be
2 held confidential and exempt from public disclosure. Similar
3 information held by the Department of Children and Family
4 Services is confidential. If such information were not held
5 confidential and exempt, elderly persons could fall prey to
6 those seeking to capitalize on their weaknesses. Also, if
7 their addresses were available, and their disabilities known,
8 criminals could more readily attack these elderly citizens.
9 Accordingly, it is necessary in order to protect the health,
10 safety, and welfare of our elderly citizens, that identifying
11 information regarding them be kept confidential and protected
12 from general public disclosure, in accordance with the public
13 records law and the State Constitution.

14 Section 4. This act shall take effect on the same date
15 that House Bill ____ or similar legislation creating internal
16 risk management and quality assurance programs in long-term
17 care facilities licensed under part II or part III of chapter
18 400, Florida Statutes, takes effect, if such legislation is
19 adopted in the same legislative session or an extension
20 thereof.

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