

By the Committee on Education

304-263A-01

1 A bill to be entitled
2 An act relating to public records and meetings;
3 repealing s. 240.2995(6), F.S., which contains
4 a declaration that meetings of the governing
5 board of a university health services support
6 organization are public and a requirement that
7 certain records be made available to the
8 Department of Insurance; amending s. 240.2996,
9 F.S.; requiring such an organization to make
10 certain records available to the Department of
11 Insurance; revising those records of such
12 organizations pertaining to marketing plans and
13 managed care contracts and those committee,
14 governing board, and peer review panel meetings
15 which are exempted from open-records and
16 open-meetings requirements; providing for
17 recording proceedings at meetings; prescribing
18 a schedule for release of records; providing
19 findings of public necessity; providing for
20 subsequent repeal and legislative review;
21 providing an effective date.

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

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25 Section 1. Subsection (6) of section 240.2995, Florida
26 Statutes, is repealed.

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28 Section 2. Section 240.2996, Florida Statutes, is
29 amended to read:

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31 240.2996 University health services support
organization; confidentiality of information.--

1 (1) All meetings of a governing board of a university
2 health services support organization and all university health
3 services support organization records shall be open and
4 available to the public in accordance with s. 286.011 and s.
5 24(b), Art. I of the State Constitution and chapter 119 and s.
6 24(a), Art. I of the State Constitution, respectively, unless
7 made confidential or exempt by law. Records required by the
8 Department of Insurance to discharge its duties shall be made
9 available to the department upon request.

10 (2) The following university health services support
11 organization's records and information are confidential and
12 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
13 I of the State Constitution:

14 (a) Contracts for managed care arrangements under
15 which the university health services support organization
16 provides health care services, including preferred provider
17 organization contracts, health maintenance organization
18 contracts, alliance network arrangements, and exclusive
19 provider organization contracts, and any documents directly
20 relating to the negotiation, performance, and implementation
21 of any such contracts for managed care arrangements or
22 alliance network arrangements. As used in this paragraph, the
23 term "managed care" means systems or techniques generally used
24 by third-party payors or their agents to affect access to and
25 control payment for health care services. Managed-care
26 techniques most often include one or more of the following:
27 prior, concurrent, and retrospective review of the medical
28 necessity and appropriateness of services or site of services;
29 contracts with selected health care providers; financial
30 incentives or disincentives related to the use of specific
31 providers, services, or service sites; controlled access to

1 and coordination of services by a case manager; and payor
2 efforts to identify treatment alternatives and modify benefit
3 restrictions for high-cost patient care.

4 (b) Each ~~A~~ university health services support
5 organization's marketing plan the disclosure of which plans
6 ~~for marketing its services, which services are or may~~
7 reasonably be expected by the organization's governing board
8 to be used by a competitor or an affiliated provider of the
9 organization to frustrate, circumvent, or exploit the purpose
10 of the plan before it is implemented and which is not
11 otherwise known or cannot be legally obtained by a competitor
12 or an affiliated provider ~~provided by competitors of the~~
13 ~~organization or its affiliated providers.~~ However, documents
14 that are submitted to the organization's governing board as
15 part of the board's approval of the organization's budget, and
16 the budget itself, are not confidential and exempt.

17 (c) Trade secrets, as defined in s. 688.002, including
18 reimbursement methodologies and rates.

19 (d) The records of the peer review panels, committees,
20 governing board, and agents of the university health services
21 support organization which relate solely to the evaluation of
22 health care services and professional credentials of health
23 care providers and physicians employed by or providing
24 services under contract to the university health services
25 support organization. The exemptions created by this
26 paragraph shall not be construed to impair any otherwise
27 established rights of an individual health care provider to
28 inspect documents concerning the determination of such
29 provider's professional credentials.

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1 ~~The exemptions in this subsection are subject to the Open~~
2 ~~Government Sunset Review Act of 1995 in accordance with s.~~
3 ~~119.15 and shall stand repealed on October 2, 2001, unless~~
4 ~~reviewed and saved from repeal through reenactment by the~~
5 ~~Legislature.~~

6 (3)(a) Any portion of a governing board or peer review
7 panel or committee meeting during which a confidential and
8 exempt contract, document, record, marketing plan, or trade
9 secret, as provided for in subsection (2), is discussed is
10 exempt from the provisions of s. 286.011 and s. 24(b), Art. I
11 of the State Constitution.

12 (b)1. All portions of any governing board meeting
13 which are closed to the public to discuss the organization's
14 marketing plan shall be recorded by a certified court
15 reporter. The reporter shall record the times of commencement
16 and termination of the meeting, all discussion and
17 proceedings, the names of all persons present at any time, and
18 the names of all persons speaking. No portion of the meeting
19 shall be off the record. The court reporter's notes shall be
20 fully transcribed and maintained by the organization's records
21 custodian within a reasonable time after the meeting.

22 2. The closed meeting shall be restricted to
23 discussion of the organization's marketing plan.

24 3. The transcript shall become public 2 years after
25 the date of the governing board meeting or at an earlier date
26 if the marketing plan discussed at the meeting has been
27 publicly disclosed by the organization or implemented to the
28 extent that confidentiality of the marketing plan is no longer
29 necessary. If a discrete part of a marketing plan has been
30 publicly disclosed by the organization or has been implemented
31 to the extent that confidentiality of that portion of the plan

1 is no longer necessary, the organization shall redact the
2 transcript and release only that part that records discussion
3 of the nonconfidential part of the marketing plan, unless such
4 disclosure would divulge any part of the marketing plan which
5 remains confidential.

6 (c)1. All portions of any governing board meeting
7 which are closed to the public to discuss managed care
8 contracts shall be recorded by a certified court reporter. The
9 reporter shall record the times of commencement and
10 termination of the meeting, all discussion and proceedings,
11 the names of all persons present at any time, and the names of
12 all persons speaking. No portion of the meeting shall be off
13 the record. The court reporter's notes shall be fully
14 transcribed and maintained by the organization's records
15 custodian within a reasonable time after the meeting.

16 2. The closed meeting shall be restricted to
17 discussion of managed care contracts.

18 3. The transcript shall become public 2 years after
19 the termination or completion of the term of the contract or
20 at an earlier date if the managed care contract discussed at
21 the meeting has been publicly disclosed by the organization or
22 implemented to the extent that confidentiality of the contract
23 is no longer necessary. If a discrete part of a contract has
24 been publicly disclosed by the organization or has been
25 implemented to the extent that confidentiality of that portion
26 of the contract is no longer necessary, the organization shall
27 redact the contract and release only that part that records
28 discussion of the nonconfidential part of the contract, unless
29 such disclosure would divulge any part of the contract which
30 remains confidential.~~The exemption in this subsection is~~
31 ~~subject to the Open Government Sunset Review Act of 1995 in~~

1 ~~accordance with s. 119.15 and shall stand repealed on October~~
2 ~~2, 2001, unless reviewed and saved from repeal through~~
3 ~~reenactment by the Legislature.~~

4 (4) Those portions of any public record, such as a
5 tape recording, minutes, and notes, generated during that
6 portion of a governing board or peer review panel or committee
7 meeting which is closed to the public pursuant to this
8 section, which contain information relating to contracts,
9 documents, records, marketing plans, or trade secrets which
10 are made confidential and exempt by this section, are
11 confidential and exempt from the provisions of s. 119.07(1)
12 and s. 24(a), Art. I of the State Constitution. ~~The exemptions~~
13 ~~in this subsection are subject to the Open Government Sunset~~
14 ~~Review Act of 1995 in accordance with s. 119.15 and shall~~
15 ~~stand repealed on October 2, 2001, unless reviewed and saved~~
16 ~~from repeal through reenactment by the Legislature.~~

17 (5) The exemptions from s. 119.07(1) and s. 24(a),
18 Art. I of the State Constitution and s. 286.011 and s. 24(b),
19 Art. I of the State Constitution provided in this section do
20 not apply if the governing board of a university health
21 services support organization votes to lease, sell, or
22 transfer all or any substantial part of the facilities or
23 property of the university health services support
24 organization to a nonpublic entity.

25 (6) Any person may petition a court of competent
26 jurisdiction for an order for the public release of those
27 portions of any public record, such as a tape recording,
28 minutes, or notes, generated during that portion of a
29 governing board meeting which is closed to the public pursuant
30 to subsection (3), which record is made confidential and
31 exempt by subsection (4). Any action pursuant to this

1 subsection must be brought in the county where the principal
2 office of the university health services support organization
3 is located, as reflected in the records of the Secretary of
4 State. In any order for the public release of a record
5 pursuant to this subsection, the court shall make a finding
6 that a compelling public interest is served by the release of
7 the record or portions thereof which exceeds the public
8 necessity for maintaining the confidentiality of such record
9 as described in s. 2, chapter 96-171, Laws of Florida, and
10 that the release of the record will not cause damage to or
11 adversely affect the interests of private persons, business
12 entities, the university health services support organization,
13 or the affiliated university.

14 (7)(a) Those portions of any public record, such as a
15 tape recording, minutes, or notes, generated during that
16 portion of a governing board meeting at which negotiations for
17 contracts for managed-care arrangements occur, are reported
18 on, or are acted on by the governing board, which record is
19 made confidential and exempt by subsection (4), shall cease to
20 be exempt at the same time as the transcript of the meeting
21 becomes available to the public.

22 (b)1. All portions of any meeting of a governing board
23 which are closed to the public pursuant to this subsection
24 shall be recorded by a certified court reporter. The reporter
25 shall record the times of commencement and termination of the
26 meeting, all discussion and proceedings, the names of all
27 persons present at any time, and the names of all persons
28 speaking. No portion of the meeting shall be off the record.
29 The court reporter's notes shall be fully transcribed and
30 maintained by the organization's records custodian within a
31 reasonable time after the meeting.

1 2. The closed meeting shall be restricted to
2 negotiations for contracts for managed care arrangements,
3 reports on negotiations, and actions taken by the governing
4 board on negotiations.

5 3. The transcript shall become public:

6 a. Two records~~2~~ years after the termination or
7 completion of the term of the contract to which such
8 negotiations relate;

9 b. Two or, if no contract was executed, 2 years after
10 the termination of the negotiations, if no contract was
11 executed; or-

12 c. At an earlier date if the record discussed,
13 reported on, or acted on at the meeting has been publicly
14 disclosed by the organization or implemented to the extent
15 that confidentiality of the record is no longer necessary. If
16 a discrete part of the record has been publicly disclosed by
17 the organization or has been implemented to the extent that
18 confidentiality of that portion of the record is no longer
19 necessary, the organization shall redact the record and
20 release only that part that discloses the nonconfidential part
21 of the record, unless such disclosure would divulge any part
22 of the record which remains confidential.

23 (c) Notwithstanding paragraph (2)(a) and subsection
24 (4), a university health services support organization must
25 make available, upon request, the title and general
26 description of a contract for managed-care arrangements, the
27 names of the contracting parties, and the duration of the
28 contract term. Each contract ~~All contracts~~ for managed-care
29 arrangements which is are made confidential and exempt by
30 paragraph (2)(a), except those portions of any contract

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1 containing trade secrets which are made confidential and
2 exempt by paragraph (2)(c), shall become public:

3 1. Two ~~2~~ years after the termination or completion of
4 the term of the contract; or ~~;~~

5 2. At an earlier date if the contract has been
6 publicly disclosed by the organization or implemented to the
7 extent that confidentiality is no longer necessary. If a
8 discrete part of a contract has been publicly disclosed by the
9 organization or has been implemented to the extent that
10 confidentiality of that portion of the contract is no longer
11 necessary, the organization shall redact the contract and
12 release only that part that contains the nonconfidential part
13 of the contract, unless such disclosure would divulge any part
14 of the contract which remains confidential.

15 (8) A university health services support organization
16 may petition a court of competent jurisdiction to continue the
17 confidentiality of any public record made nonconfidential by
18 this section, upon a showing of good cause. In determining
19 good cause, the court shall balance the property, privacy, and
20 economic interests of any affected person or business entity
21 with those of the university health services support
22 organization and with the public interest and must make a
23 finding that a substantial public interest is served by the
24 continued confidentiality of the public record for an
25 additional time period. The length of time for this continued
26 exemption may be no longer than is necessary to protect that
27 substantial public interest.

28 (9) This act does not preclude discovery of records
29 and information that are otherwise discoverable under the
30 Florida Rules of Civil Procedure or any statutory provision

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1 allowing discovery or presuit disclosure of such records and
2 information for the purpose of civil actions.

3 Section 3. (1) Public academic health sciences
4 centers must compete with the private sector to obtain
5 revenues for their services. The Legislature authorized state
6 universities to establish university health service's support
7 organizations to serve as the corporate entities through which
8 public colleges of medicine may participate as partners in
9 integrated health care delivery organizations and to enter
10 into, for the benefit of the university academic health
11 sciences centers, arrangements with other entities as
12 providers in other integrated health care systems or similar
13 entities. University health services support organizations are
14 subject to the state's public records and public meetings
15 laws.

16 (2) The Legislature finds that the governing board of
17 a university health services support organization will not
18 discuss, debate, or participate in actions related to the
19 organization's marketing plan if the governing board's
20 discussions and records of these discussions are open to the
21 public and result in advanced or immediate disclosure of the
22 organization's marketing plans to its affiliated providers or
23 private sector competitors. The Legislature also finds that it
24 is a public necessity that the governing boards of these
25 organizations be involved in the discussions of the
26 organization's marketing plans. Consequently, the Legislature
27 finds that it is a public necessity for the marketing plans of
28 a university health services support organization, as well as
29 the tape recordings, notes, minutes, and transcripts that are
30 recorded pursuant to section 240.2996, Florida Statutes, to be
31 confidential and exempt from section 119.07(1), Florida

1 Statutes. The Legislature also finds that it is a public
2 necessity that those portions of the organization's governing
3 board meeting, committee meeting, or peer review panel meeting
4 during which any confidential and exempt marketing plan of the
5 organization is discussed be confidential and exempt from
6 section 286.011, Florida Statutes. These exemptions protect
7 the organization from competitors' gaining ready access to its
8 marketing plans which would provide an unfair business
9 advantage for competitors. Advanced or immediate disclosure of
10 the marketing plans would adversely affect the organization in
11 the marketplace.

12 (3) The Legislature finds that the governing board of
13 a university health services support organization will not
14 discuss contracts and related documents if the governing
15 board's discussions and records of these discussions are open
16 to the public and result in advanced or immediate disclosure
17 to its private sector competitors. The Legislature also finds
18 that it is a public necessity that the governing boards of
19 these organizations be involved in the discussions of the
20 organization's contracts and related documents. The
21 Legislature finds that it is a public necessity for all
22 contracts for managed care arrangements under which the
23 university health services support organization provides
24 health care services and any documents relating to the
25 negotiation, performance, and implementation of these
26 contracts for managed care arrangements or alliance network
27 arrangements to be confidential and exempt from section
28 119.07(1), Florida Statutes. It is no less a public necessity
29 that the tape recordings, notes, minutes, and transcripts that
30 are recorded pursuant to section 240.2996, Florida Statutes,
31 be confidential and exempt from section 119.07(1), Florida

1 Statutes. The Legislature also finds that it is a public
2 necessity that those portions of the organization's governing
3 board meeting, committee meeting, or peer review panel meeting
4 during which any confidential and exempt contracts and related
5 documents are discussed be confidential and exempt from
6 section 286.011, Florida Statutes. The contracts and related
7 documents include utilization review and quality assurance
8 methods and techniques, as well as proprietary business
9 information such as reimbursement methodologies and rates.
10 These exemptions protect the organization from the
11 competitors' gaining ready access to its contracts and related
12 documents which would provide an unfair business advantage for
13 competitors. Advanced or immediate disclosure of the contracts
14 and related documents would adversely affect the business
15 interests of the organization and its actual or potential
16 contractors in the marketplace.

17 (4) The Legislature finds that it is a public
18 necessity that trade secrets, as defined in section 688.002,
19 Florida Statutes, including reimbursement methodologies and
20 rates, as well as the tape recordings, notes, minutes, and
21 transcripts that are recorded pursuant to section 240.2996,
22 Florida Statutes, be confidential and exempt from section
23 119.07(1), Florida Statutes. The Legislature also finds that
24 it is a public necessity that those portions of the meetings
25 of the organization's governing board, committee, or peer
26 review panel during which any confidential and exempt trade
27 secret or proprietary business information is discussed be
28 confidential and exempt from section 286.011, Florida
29 Statutes. These exemptions protect the organization's
30 proprietary business information and the trade secret and
31 proprietary business information that the organization obtains

1 from private entities doing business with the organization.
2 Disclosing trade secrets and proprietary business information
3 in the organization's possession to competitors would
4 negatively affect the business interests of the organization
5 and private entities doing business with the organization and
6 adversely affect these entities in the marketplace.

7 (5) The Legislature finds that it is a public
8 necessity to make confidential and exempt from section
9 119.07(1), Florida Statutes, the records of the university
10 health services support organization that are used by its peer
11 review panels, committees, governing board, and agents to
12 evaluate health care services and health care providers'
13 professional credentials. It is no less a public necessity
14 that the tape recordings, notes, minutes, and transcripts that
15 are recorded pursuant to section 240.2996, Florida Statutes,
16 be confidential and exempt from section 119.07(1), Florida
17 Statutes. The Legislature also finds that it is a public
18 necessity that those portions of the meetings of the
19 organization's governing board, committee, or peer review
20 panel during which any confidential and exempt information is
21 discussed be confidential and exempt from section 286.011,
22 Florida Statutes. These exemptions protect information of a
23 sensitive personal nature concerning health care providers and
24 physicians who are employed by or under contract with the
25 organization to provide services and who are subject to the
26 organization's peer review and credentialing process. If
27 disclosed, the information would defame individual health care
28 providers and physicians or cause unwarranted damage to their
29 good names or reputations. Without the exemptions, information
30 necessary to the peer review and credentialing process could
31 not be obtained and meaningful review would not be possible.

