SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 254

SPONSOR: Health, Aging and Long-Term Care Committee

SUBJECT: Public Records and Meetings of Managed Care Ombudsman Committees

DATE: November 20, 2001 REVISED: 11/29/01

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HC	Fav/1 amendment
2.			GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

Senate Bill 254 abrogates the repeal of exemptions from public-records and public-meetings requirements for district managed care ombudsman committees. The exemptions are scheduled for repeal under the Open Government Sunset Review Act of 1995. Section 641.67, F.S., makes confidential and exempt from the Public Records Law patient records and the name or identity of a complainant held by or submitted to a district managed care ombudsman committee, including any problem identified. Section 641.68, F.S., makes confidential and exempt from the Public Meetings Law those portions of the meetings of the district managed care ombudsman committees wherein patient records and the name or identity of a complainant are addressed. The bill repeals the exemptions provided for the statewide managed care ombudsman committee.

The bill amends ss. 641.67 and 641.68, F.S.

II. Present Situation:

Public Records Law

The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies. While the state constitution provides that records and meetings of public bodies are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, Florida Constitution, governs the creation and expansion of exemptions, to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Florida Constitution, provides

that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The Open Government Sunset Review Act of 1995

Section 119.15, F.S., the "Open Government Sunset Review Act of 1995," establishes a review and repeal process for exemptions to public records or meeting requirements. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature acts to reenact the exemption. Section 119.15(3)(a), F.S., requires a law that enacts a new exemption or substantially amends an existing exemption to state that the exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

In the year before the scheduled repeal of an exemption, the Division of Statutory Revision is required to certify to the President of the Senate and the Speaker of the House of Representatives each exemption scheduled for repeal the following year which meets the criteria of an exemption as defined in s. 119.15, F.S. An exemption that is not identified and certified is not subject to legislative review and repeal. If the division fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

Section 119.15(2), F.S., states that an exemption is to be maintained only if:

(a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
(b) The exemption is necessary for the effective and efficient administration of a governmental program; or
(c) The exemption affects confidential information concerning an entity.

Further, s. 119.15(4)(a), F.S., requires consideration of the following specific questions as part of the review:

(a) What specific records or meetings are affected by the exemption?
(b) Whom does the exemption uniquely affect, as opposed to the general public?
(c) What is the identifiable public purpose or goal of the exemption?
(d) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Additionally, under s. 119.15(4)(b), F.S., an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. 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 cannot be accomplished without the exemption:

(a) Does the exemption allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption?

(b) Does the exemption protect 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 paragraph, only information that would identify the individuals may be exempted.)
(c) Does the exemption protect 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?

Managed Care Ombudsman Program

The Florida Managed Care Ombudsman Program is a consumer advocacy organization for subscribers of managed care plans. Ombudsman programs are distinctive in that they are independent, volunteer-based entities that seek to address grievances of health care consumers by means of intervention, advocacy and dispute resolution.

The Florida Managed Care Ombudsman Program (MCOP) has a decidedly grassroots background. In approximately 1985, a group of interested health professionals in Broward County formed a group termed "HMO Patient Advocates," whose name was then changed to "Advocates for Patients of Managed Care." This group of approximately 50 to 100 individuals began to unofficially act as advocates for managed care subscribers and became the genesis for the MCOP.

In 1996, the Advocates for Patients of Managed Care became the official MCOP under ch. 96-391, L.O.F., to act as a consumer protection and advocacy organization on behalf of all managed care plan subscribers in the state under s. 641.60, F.S., et seq.

The MCOP is authorized to have a statewide managed care ombudsman committee and 11 district committees under ss. 641.60 and 641.65, F.S. Currently, only four of the 11 district committees are operational – in Broward, Palm Beach, Dade and Charlotte/Lee/Collier Counties. The district committees consist of a minimum of nine and a maximum of 16 members and are directed to: protect the health, safety and welfare of managed care enrollees; receive complaints regarding quality of care from the Agency for Health Care Administration (AHCA) and assist AHCA with resolutions; conduct site visits with AHCA if appropriate; and submit an annual report to the statewide committee detailing activities, recommendations and complaints reviewed under s. 641.65, F.S.

For administrative purposes, the MCOP is located within AHCA under s. 641.60(2), F.S., and AHCA is charged with the responsibility of providing administrative support for the program. AHCA assists in training for the district committees, provides complaint referrals, and maintains a database of referrals and case outcomes.

There are 28 managed care organizations in Florida with approximately six million subscribers (4,805,122 commercial, 689,729 Medicare and 524,969 Medicaid), representing health

maintenance organizations (HMOs), prepaid health clinics, Medicaid prepaid health plans, Medicaid primary care case management programs, and other similar Medicaid programs.

As a prerequisite to an HMO obtaining a mandatory Health Care Provider Certificate from AHCA and a Certificate of Authority from the Department of Insurance (DOI), the HMO must establish and maintain an internal subscriber grievance procedure under ss. 641.21(1)(e), 641.22(9) and 641.495(9), F.S. Upon exhaustion of subscriber rights under the internal grievance procedure, the subscriber may have his or her grievance heard by AHCA's Statewide Provider and Subscriber Assistance Panel under s. 408.7056(2), F.S.

The MCOP often assists subscribers by guiding them through the managed care organization's internal grievance process, including: advising subscribers on filling out forms, contacting the organization's staff, discussing terms of coverage and the like.

The MCOP receives referrals from AHCA that originate with the AHCA telephone complaint center. For fiscal year 2000-2001 the MCOP handled 636 disputes, the vast majority of which related to HMOs.

While the MCOP has been in existence since 1996, it has never received funding. MCOP volunteers are free to utilize AHCA district offices' equipment and supplies, but there is not an AHCA office in each of the 11 districts, and no funds are allocated for any travel expenses incurred by the volunteers.

Managed Care Ombudsman Confidentiality

The medical records of a subscriber and the identity of a complainant involved in an ombudsman review are exempt from public records disclosure under s. 641.67, F.S. That portion of any meeting of an ombudsman committee addressing medical records or complainant identity is exempt from public-meeting requirements under s. 641.68, F.S. As well, "any problem identified by the ombudsman committee as a result of an investigation" is made exempt under s. 41.67(1)(b), F.S.

The public purpose or goal of maintaining the disclosure exemptions for medical records and complainant identity is primarily to protect information of a sensitive personal nature concerning individuals, the release of which could cause embarrassment, loss of privacy or harm to the reputation or public standing of such individuals. The principal purpose or goal of the exemption for a "problem identified" is to allow the state or its political subdivisions to effectively and efficiently administer the ombudsman program and to protect information of a confidential nature concerning managed care entities, the disclosure of which could injure the affected entity in the marketplace.

The nature of the exemption for a "problem identified" is identical to the exemption provided for the long-term care ombudsman program under s. 400.0077, F.S., and similar to the exemption provided for medical peer review committees and hospital risk management functions under ss. 395.0197 and 766.101, F.S. Without the exemption for a "problem identified" under s. 641.67(1)(b), F.S., there would be a significant disincentive for managed care organizations to candidly discuss issues and cooperate in ombudsman complaint resolution.

Senate Interim Project Report 2002-220

Staff reviewed the exemption to the public records requirements in s. 641.67, F.S., making patient records and the name or identity of a complainant held by or submitted to a statewide or district managed care ombudsman committee, including any problem identified, confidential and exempt from the Public Records Law. Staff also reviewed the exemption to the public meetings requirements in s. 641.68, F.S., making those portions of meetings of the statewide or district managed care ombudsman committees wherein patient records and the name or identity of a complainant are addressed, confidential and exempt from the Public Meetings Law.

Staff found that the statewide and district ombudsman committees would not be able to effectively administer the ombudsman program without the public records and public meetings exemptions. Staff recommended that the exemption to the public records requirements in s. 641.67, F.S., and the exemption to the public meetings requirements in s. 641.68, F.S., be reenacted without substantive changes. Staff's findings and recommendations are detailed in *Interim Project Report 2002-220*.

III. Effect of Proposed Changes:

This bill reenacts ss. 641.67 and 641.68, F.S., in accordance with a review pursuant to the Open Government Sunset Review Act of 1995, with certain changes. The bill abrogates the repeal of exemptions from public-records and public-meetings requirements for district managed care ombudsman committees. The bill repeals the exemptions provided for the statewide managed care ombudsman committee.

A related bill, SB 412, repeals the statewide managed care ombudsman committee, thus leaving subscribers with recourse to the Statewide Provider and Subscriber Assistance Panel under s. 408.7056, F.S. The statewide managed care ombudsman committee has met infrequently and has not received the kinds of information that are exempt from public records under this bill. Thus, if SB 412 did not become law and the statewide managed care ombudsman committee continued to exist, the repeal of that committee's exemption in this bill would not place individual records at risk of public access.

Section 641.67, F.S., is amended to clarify the wording of the public records exemptions by placing in separate paragraphs the exemption for the name or identity of a complainant and the exemption for any problem identified as a result of an investigation by the district managed care ombudsman.

The bill removes from statute the statements of public necessity for the public records and public meetings exemptions in ss. 641.67 and 641.68, F.S.

The effective date of the bill is October 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

In accordance with a review pursuant to the Open Government Sunset Review Act of 1995, this proposed committee bill reenacts ss. 641.67 and 641.68, F.S. The bill abrogates the scheduled repeal of exemptions from public-records and public-meetings requirements for district managed care ombudsman committees and repeals these same exemptions for the statewide managed care ombudsman committee.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

1 by Health, Aging and Long-Term Care:
Repeals the public records exemption for information about any problem identified as a result of an ombudsman committee investigation.