

By the Committee on Governmental Oversight and Productivity;
and Senator Garcia

302-2322-02

1 A bill to be entitled
2 An act relating to public records and meetings;
3 amending s. 240.2996, Florida Statutes;
4 expanding an exemption for university
5 direct-support organizations, including
6 meetings and records of community college
7 direct-support organizations; providing for
8 future review and repeal; providing a finding
9 of public necessity; providing an effective
10 date.

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

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14 Section 1. Notwithstanding subsection (7) of section 3
15 of chapter 2000-321, Laws of Florida, section 240.2996,
16 Florida Statutes, is not repealed on January 7, 2003, as
17 provided in that act, but that section is reenacted and
18 amended to read:

19 240.2996 University and college health services
20 support organization; confidentiality of information.--

21 (1) All meetings of a governing board of a university
22 or college health services support organization and all
23 university and college health services support organizations'
24 ~~organization~~ records shall be open and available to the public
25 in accordance with s. 286.011 and s. 24(b), Art. I of the
26 State Constitution and chapter 119 and s. 24(a), Art. I of the
27 State Constitution, respectively, unless made confidential or
28 exempt by law. Records required by the Department of Insurance
29 to discharge its duties shall be made available to the
30 department upon request.

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1 (2) The following university and college health
2 services support organizations'~~organization's~~ records and
3 information are confidential and exempt from the provisions of
4 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

5 (a) Contracts for managed care arrangements under
6 which the university or college health services support
7 organization provides health care services, preferred provider
8 organization contracts, health maintenance organization
9 contracts, alliance network arrangements, and exclusive
10 provider organization contracts, and any documents directly
11 relating to the negotiation, performance, and implementation
12 of any such contracts for managed care arrangements or
13 alliance network arrangements. As used in this paragraph, the
14 term "managed care" means systems or techniques generally used
15 by third-party payors or their agents to affect access to and
16 control payment for health care services. Managed-care
17 techniques most often include one or more of the following:
18 prior, concurrent, and retrospective review of the medical
19 necessity and appropriateness of services or site of services;
20 contracts with selected health care providers; financial
21 incentives or disincentives related to the use of specific
22 providers, services, or service sites; controlled access to
23 and coordination of services by a case manager; and payor
24 efforts to identify treatment alternatives and modify benefit
25 restrictions for high-cost patient care.

26 (b) Each university and college health services
27 support organization's marketing plan the disclosure of which
28 may reasonably be expected by the organization's governing
29 board to be used by a competitor or an affiliated provider of
30 the organization to frustrate, circumvent, or exploit the
31 purposes of the plan before it is implemented and which is not

1 otherwise known or cannot be legally obtained by a competitor
2 or an affiliated provider. However, documents that are
3 submitted to the organization's governing board as part of the
4 board's approval of the organization's budget, and the budget
5 itself, are not confidential and exempt.

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

8 (d) The records of the peer review panels, committees,
9 governing board, and agents of the university or college
10 health services support organization which relate solely to
11 the evaluation of health care services and professional
12 credentials of health care providers and physicians employed
13 by or providing services under contract to the university or
14 college health services support organization. The exemptions
15 created by this paragraph shall not be construed to impair any
16 otherwise established rights of an individual health care
17 provider to inspect documents concerning the determination of
18 such provider's professional credentials.

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

25 (4) Those portions of any public record, such as a
26 tape recording, minutes, and notes, generated during that
27 portion of a governing board or peer review panel or committee
28 meeting which is closed to the public pursuant to this
29 section, which contain information relating to contracts,
30 documents, records, marketing plans, or trade secrets which
31 are made confidential and exempt by this section, are

1 confidential and exempt from the provisions of s. 119.07(1)
2 and s. 24(a), Art. I of the State Constitution.

3 (5) The exemptions from s. 119.07(1) and s. 24(a),
4 Art. I of the State Constitution and s. 286.011 and s. 24(b),
5 Art. I of the State Constitution provided in this section do
6 not apply if the governing board of a university or college
7 health services support organization votes to lease, sell, or
8 transfer all or any substantial part of the facilities or
9 property of the university or college health services support
10 organization to a nonpublic entity.

11 (6) Any person may petition a court of competent
12 jurisdiction for an order for the public release of those
13 portions of any public record, such as a tape recording,
14 minutes, or notes, generated during that portion of a
15 governing board meeting which is closed to the public pursuant
16 to subsection (3), which record is made confidential and
17 exempt by subsection (4). Any action pursuant to this
18 subsection must be brought in the county where the principal
19 office of the university or college health services support
20 organization is located, as reflected in the records of the
21 custodian of state records ~~Secretary of State~~. In any order
22 for the public release of a record pursuant to this
23 subsection, the court shall make a finding that a compelling
24 public interest is served by the release of the record or
25 portions thereof which exceeds the public necessity for
26 maintaining the confidentiality of such record as described in
27 s. 2, chapter 96-171, Laws of Florida, and that the release of
28 the record will not cause damage to or adversely affect the
29 interests of private persons, business entities, the
30 university or college health services support organization, or
31 the affiliated university or college.

1 (7) Those portions of any public record, such as a
2 tape recording, minutes, or notes, generated during that
3 portion of a governing board meeting at which negotiations for
4 contracts for managed-care arrangements occur, are reported
5 on, or are acted on by the governing board, which record is
6 made confidential and exempt by subsection (4), shall become
7 public records 2 years after the termination or completion of
8 the term of the contract to which such negotiations relate or,
9 if no contract was executed, 2 years after the termination of
10 the negotiations. Notwithstanding paragraph (2)(a) and
11 subsection (4), a university or college health services
12 support organization must make available, upon request, the
13 title and general description of a contract for managed-care
14 arrangements, the names of the contracting parties, and the
15 duration of the contract term. All contracts for managed-care
16 arrangements which are made confidential and exempt by
17 paragraph (2)(a), except those portions of any contract
18 containing trade secrets which are made confidential and
19 exempt by paragraph (2)(c), shall become public 2 years after
20 the termination or completion of the term of the contract.

21 (8) A university or college health services support
22 organization may petition a court of competent jurisdiction to
23 continue the confidentiality of any public record made
24 nonconfidential by this section, upon a showing of good cause.
25 In determining good cause, the court shall balance the
26 property, privacy, and economic interests of any affected
27 person or business entity with those of the university or
28 college health services support organization and with the
29 public interest and must make a finding that a substantial
30 public interest is served by the continued confidentiality of
31 the public record for an additional time period. The length of

1 time for this continued exemption may be no longer than is
2 necessary to protect that substantial public interest.

3 (9) This act does not preclude discovery of records
4 and information that are otherwise discoverable under the
5 Florida Rules of Civil Procedure or any statutory provision
6 allowing discovery or presuit disclosure of such records and
7 information for the purpose of civil actions.

8 Section 2. The Legislature finds it is a public
9 necessity to exempt certain contracts for managed care
10 arrangements, marketing plans, trade secrets, reimbursement
11 methodologies and rates, records of peer review boards that
12 evaluate health care services and professional credentials of
13 health care providers and physicians, and peer review meetings
14 under section 240.2996, Florida Statutes, from disclosure to
15 protect a business advantage that a health support
16 organization has over its competitors, disclosure of which
17 would impair the business advantage by allowing competitors
18 with detailed insight into confidential information concerning
19 the methodology and strategic plans of the health support
20 organization thereby causing injury in the marketplace. The
21 exemption for certain peer review meetings ensures that a
22 governmental program will be effectively and efficiently
23 administered because of the reluctance of healthcare providers
24 to publicly comment on the qualifications of another
25 healthcare provider.

26 Section 3. This act shall take effect January 7, 2003.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 658

Expands exemption for university health services support organizations to include community colleges.
Provides an effective date of January 7, 2003.