

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1031 (PCB SA 03-10) Public Records Exemption/Florida Kidcare Program  
**SPONSOR(S):** State Administration and Mack  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 298

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2<sup>nd</sup> of the fifth year after enactment.

This bill reenacts and expands the public records exemption for the Florida Kidcare program, which will repeal on October 2, 2003, if this bill does not become law.

Current law provides a public records exemption for a Florida Kidcare program applicant's identifying information contained in an application for determination of eligibility or obtained through quality assurance activities and surveys. This bill reenacts and expands that exemption to include a parent or guardian's identifying information contained in all documents held by the Agency for Health Care Administration (AHCA), Department of Children and Family Services (DCFS), Department of Health (DOH), and Florida Healthy Kids Corporation. This bill further expands the exemption to include a child's identifying information held by AHCA, DCFS, DOH, and the Florida Healthy Kids Corporation.

This bill creates criminal penalties, provides for retroactive application and future review and repeal of the exemption, and provides a finding of public necessity.

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

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1031.sa.doc  
**DATE:** March 3, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

The Florida Kidcare program was created to make affordable health insurance available to low and moderate income Florida children. Currently the program includes health benefits coverage provided to children through the following four components: Medicaid, Medikids, the Florida Healthy Kids Corporation, and the Children's Medical Services network (CMS). With the exception of the Medicaid program component, coverage under the Florida Kidcare program is not an entitlement.

Ensuring compliance with federal and state law regarding placement of a child in the appropriate program component, and efficient use of state funds, requires that a child's initial application and subsequent updates of that information be screened by state agencies to determine the appropriate placement in a Florida Kidcare program component. The agencies screen each applicant to either rule out or confirm eligibility factors which would render the applicant ineligible for the program entirely or suggest that an applicant might be eligible for one of the Florida Kidcare program components. Proper administration of the Florida Kidcare program therefore requires a free interchange of data between the agencies operating the program, and between the agencies and entities providing coverage.

Florida law provides a public records exemption for any information contained in an application for determination of eligibility for the Florida Kidcare program, which identifies an applicant (parent or guardian), and that is obtained by the Florida Kidcare program.<sup>1</sup> Any information obtained by the Florida Kidcare program through quality assurance activities and patient satisfaction surveys, which identifies program participants, is confidential and exempt<sup>2</sup> from public disclosure.

The exemption only applies to such information when contained in an application for determination of eligibility or obtained through quality assurance activities and surveys. AHCA, DCFS, DOH, and the Florida Healthy Kids Corporation have all stated that such information is also obtained using other means. For example, one of the administering agencies might call and request additional information from such applicant via the telephone. Because the information requested by telephone was not contained in the application, it could be argued that such information cannot be afforded the same

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<sup>1</sup> Section 409.821, F.S.

<sup>2</sup> There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

protection as the information contained in the application. Furthermore, because such information is not always protected by the current exemption, Florida might be in violation of federal Medicaid requirements.

Federal regulations require state Medicaid agencies to restrict the disclosure of information about applicants (parent or guardian) and enrollees (children) to purposes directly connected with the administration of the program. Federal regulations also require that state Medicaid agencies have criteria that will ensure the safekeeping of identifying information about Medicaid recipients. Such regulations also require statutory legal sanctions for inappropriate disclosure of information concerning applicants and enrollees. In addition to not ensuring the safekeeping of the identifying information of applicants for and enrollees in the Florida Kidcare program, the law does not provide legal sanctions for inappropriate disclosure of such information.

The public records exemption also provides that confidential information may not be released without the written consent of the applicant or the parent or guardian of the applicant. As defined by the Florida Kidcare program, an "applicant" for such program is the parent or guardian of a child or a child whose disability of nonage has been removed, who applies for determination of eligibility for health benefits coverage under the program. An "enrollee" is the child who has been determined eligible for and is receiving coverage under the program. Therefore, use of the phrase "parent or guardian of the applicant" is not only redundant, but nonsensical.

Current law provides for future review and repeal of the public records exemption for the Florida Kidcare program. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 409.821, F.S., will repeal on October 2, 2003, unless otherwise reenacted by the Legislature. Pursuant to the Act, the Florida House of Representatives Committee on State Administration sent an Open Government Sunset Review Questionnaire to AHCA, DCFS, DOH, and the Florida Healthy Kids Corporation and held meetings with agency staff, regarding the public records exemption for such program.

### **Effect of Bill**

As a result of those questionnaire responses and meetings, this bill reenacts and expands the current exemption.

This bill expands the exemption to include an applicant's identifying information contained in *all* documents held by AHCA, DCFS, DOH, and the Florida Healthy Kids Corporation. This bill also expands the exemption to include an enrollee's identifying information held by AHCA, DCFS, DOH, and the Florida Healthy Kids Corporation.

This bill allows other governmental entities to have access to such confidential and exempt information in the furtherance of the receiving entity's duties and responsibilities under the Florida Kidcare program. The receiving entity must maintain the confidential and exempt status of such information. Furthermore, this bill clarifies that the identifying information of an applicant or enrollee may only be released to another person upon written consent of the program applicant, which is the parent or guardian of a child or a child whose disability of nonage has been removed.

In order to comply with federal law, this bill also provides that it is a misdemeanor of the second degree for violating the provisions of this section. This bill provides for retroactive application<sup>3</sup> and future review and repeal of the exemption and provides a finding of public necessity. It also adds clarifying language and makes editorial changes.

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<sup>3</sup> On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

C. SECTION DIRECTORY:

Section 1. Amends s. 409.821, F.S., by reenacting and expanding the public records exemption for the Florida Kidcare program.

Section 2. Provides for future review and repeal of the exemption.

Section 3. Provides a statement of public necessity.

Section 4. Provides that the act shall take effect upon becoming law.

**II. 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.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.
- 2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act of 1995**

The Open Government Sunset Review Act of 1995<sup>4</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However,

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<sup>4</sup> Section 119.15, F.S.

only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 21, 2003, the Committee on State Administration adopted an amendment which adds clarifying language regarding the exception to the exemption.