

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1033 (PCB SA 03-08)                      Public Records/Meetings Exemption/Subscriber Program  
**SPONSOR(S):** State Administration and Mack  
**TIED BILLS:** None    **IDEN./SIM. BILLS:** SB 306

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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 If the Legislature does not reenact the exemption, it is automatically repealed on October 2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 with stylistic and conforming changes the public records exemption, and reenacts and narrows the public meetings exemption, for the Statewide Provider and Subscriber Assistance Program, which will repeal on October 2, 2003, if this bill does not become law.

The Statewide Provider and Subscriber Assistance Program, which is administered by the Agency for Health Care Administration (AHCA), mediates disputes between a consumer/subscriber and his or her managed care entity when the dispute has not been resolved within the managed care entity's grievance process. Reenacted are the exemptions for the personal information collected in preparation of the mediation, and the actual mediation meetings wherein the personal information is discussed.

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

# 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 Statewide Subscriber Assistance Program (program) was created in 1985. The program mediates disputes between a consumer/subscriber and his or her managed care entity that are not resolved within the managed care entity’s grievance process.

The program must consist of one or more panels comprised of three employees from the Agency for Health Care Administration (AHCA) and three employees from the Department of Financial Services (DFS). The panel convenes periodically to review and consider information relating to unresolved grievances arising between a subscriber or a provider (on behalf of a subscriber) and an accountable health partnership, an HMO, a prepaid health clinic, a Medicaid prepaid health plan, or an exclusive provider organization. Following its review, the panel may recommend to AHCA actions that DFS or AHCA should take concerning a case heard by the panel. The panel may also notify AHCA of grievances that have not been satisfactorily resolved regarding subscribers or providers who have followed the managed care entity’s grievance process.

Current law provides a public records exemption for certain information relating to the proceedings of the panel held by the Department of Insurance (now called DFS),<sup>1</sup> panel,<sup>2</sup> or AHCA.<sup>3</sup> Information that would identify a subscriber or the spouse, relative, or guardian of a subscriber obtained or created by the Department of Insurance (DOI), the panel, or AHCA is confidential and exempt from public disclosure.<sup>4</sup> The exemption for the subscriber’s spouse, relative, or guardian appears duplicative, because such information would also identify the subscriber and would already be protected from public disclosure.

Current law also provides a public meetings exemption for meetings or portions thereof if the provider or subscriber whose grievance will be heard requests a closed meeting. Also, AHCA or DOI may request that a meeting or portion thereof be closed to the public if: information of a sensitive personal nature which discloses the subscriber’s medical treatment or history will be discussed; information

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<sup>1</sup> Section 408.7056(13), F.S.

<sup>2</sup> Section 408.7056(15)(a), F.S.

<sup>3</sup> *Id.*

<sup>4</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.

which constitutes a trade secret will be discussed; or information relating to internal risk management programs may be revealed. Closed panel meetings are recorded by a court reporter. AHCA indicated in its response to the House Committee on State Administration survey that the provider records reviewed by the panel contain risk management program information but not trade secret information. Therefore, it appears that the public meetings exemption for trade secret information is unnecessary.

Additionally, the public records and public meetings apply to the Department of Insurance. The Department of Insurance is now called the Department of Financial Services, yet the current public records and meetings exemptions do not reflect this change in nomenclature.

Current law provides for future review and repeal of the public records and public meetings exemptions for the Statewide Subscriber Assistance Program. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 408.7056(15), 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 and DOI.

### **Effect of Bill**

As a result of those questionnaire responses, this bill reenacts with certain changes the public records exemption, and reenacts and narrows the public meetings exemption.

This bill reenacts with stylistic and conforming changes the public records exemption for the Statewide Subscriber Assistance Program. The bill also removes the exemption for the identifying information of a subscriber's spouse, relative, or guardian, because disclosure of such information would identify the subscriber. This bill creates an exception to the public records exemption by requiring the panel, AHCA, or DFS to release information identifying a subscriber to the subscriber or managed care entity involved in a grievance procedure.

This bill reenacts and narrows the public meetings exemption by no longer closing access to portions of meetings wherein trade secrets are discussed.

Finally, this bill removes the sentence that requires the repeal of the public records and public meetings exemptions.

#### **C. SECTION DIRECTORY:**

Section 1. Repeals s. 408.7056(13), F.S., which provides a public records exemption for subscriber identifying information submitted to the Department of Insurance, and amends s. 408.7056(15), F.S., by reenacting with stylistic and conforming changes and reenacting and narrowing the public meetings exemption, for the Statewide Provider and Subscriber Assistance Program.

Section 2. Provides that the act shall take effect October 1, 2003.

## **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>5</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, 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 to create an exception to the public records exemption. The amendment requires the panel, AHCA, or DFS to release information identifying a subscriber to the subscriber or managed care entity involved in the grievance procedure.

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<sup>5</sup> Section 119.15, F.S.