

# 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: CS/SB 298

SPONSOR: Governmental Oversight & Productivity and Health, Aging, and Long-Term Care Committee

SUBJECT: Public Records

DATE: April 1, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Liem	Wilson	HC	Fav/1 amendment
2.	Dowds	Whiddon	CF	Favorable
3.	Rhea	Wilson	GO	Fav/CS
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The Committee Substitute for Senate Bill 298 is the result of an Open Government Sunset Review of an exemption from public records requirements performed by the Committee on Health Care during the interim. The exemption, which is found in s. 409.821, F.S., will repeal October 2, 2003, unless the Legislature abrogates the repeal.

The bill re-enacts and expands an exemption from ch. 119, F.S., the Public Records Law, and Section 24(a), Article I of the State Constitution, for information held by the Agency for Health Care Administration (AHCA), the Department of Children and Family Services (DCF), the Department of Health (DOH) or the Florida Healthy Kids Corporation that identifies a Florida Kidcare program applicant or enrollee. The bill allows the disclosure of the confidential and exempt information to another governmental entity for purposes directly related to the administration of the KidCare program. The receiving entity must maintain the confidential and exempt status of the information, and is prohibited from releasing the information without the written consent of the program applicant. The bill provides that a violation of the section is a second-degree misdemeanor.

The bill makes the exemption subject to a future review and repeal date of October 2, 2008, as required by s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The bill provides findings and statements of public necessity to justify the expansion of the public records exemption.

The bill amends section 409.821 of the Florida Statutes.

## **II. Present Situation:**

### **Public Records**

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. While the state constitution provides that records 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. Section 24 of Article I of the 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. It also provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217 of the Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records exemptions that are created or substantially amended in 1996 and subsequently. The review cycle began in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

### **The Kidcare Program**

Florida’s Kidcare program was created by the 1998 Legislature to make affordable health insurance available to low and moderate income Florida children. Kidcare is an “umbrella” program that currently includes the following four components: Medicaid for children; Medikids; the Healthy Kids Program; and the Children’s Medical Services (CMS) Network, which includes a behavioral health component. The Florida Healthy Kids program component of Kidcare is administered by the non-profit Florida Healthy Kids Corporation (FHKC), established in s. 624.91, F.S. Florida’s Healthy Kids program existed prior to the implementation of the federal Title XXI State Child Health Insurance Program. Florida was one of three states to have the benefit package of an existing child health insurance program grandfathered in as part of the Balanced Budget Act of 1997, which created the federal State Child Health Insurance Program. Medicaid and Medikids are administered by the Agency for Health Care Administration (AHCA) and the CMS Network is administered by the Department of Health (DOH).

The Florida Healthy Kids Corporation contracts with a fiscal agent to perform initial eligibility screening for the program and final eligibility determination for children who are not Medicaid eligible. The fiscal agent refers children who appear to be eligible for Medicaid to the Department of Children and Family Services for Medicaid eligibility determination and children who appear to have a special health care need to Children's Medical Services for evaluation. The Florida Healthy Kids Corporation fiscal agent generates bills for co-payments for those participants who are required to pay a portion of the premium for their coverage.

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 Kidcare program component. The agencies screen each application to either rule out or confirm eligibility factors which would render the applicant ineligible for the program entirely (such as being the dependant of a state employee) or suggest that an applicant might be eligible for one of the Kidcare program components (such as a child with special health care needs who should be enrolled in the CMS Network). Proper administration of the Kidcare program therefore requires a free interchange of data between the agencies operating the program and between the agencies and the entities providing coverage.

### **The Kidcare Public Records Exemption**

Section 409.821, F.S., makes any information in an application for the Kidcare program which identifies the applicant and which is obtained by the Florida Kidcare Program, confidential and exempt. The section makes information obtained through quality assurance activities and patient satisfaction surveys which identifies program participants confidential and exempt. The section additionally prohibits release by program staff or agents of confidential information to any state or federal agency, private business, person or any other entity without the written consent of the applicant or the parent or guardian of the applicant.

### **Federal Requirements for Safeguarding Information**

Medicaid is a medical assistance program that pays for health care for the poor and disabled. The program is jointly funded by the federal government, the state, and the counties. The federal government, through law and regulations, has established extensive requirements for the Medicaid program. Under s. 409.902, F.S., the Agency for Health Care Administration is the single state agency responsible for the Florida Medicaid Program. The federal authority for Medicaid program operations is the Social Security Act, which requires states to submit a "Medicaid State Plan" in which the state describes its compliance with federal law and regulations.

Federal regulations at 42 CFR 431 Subpart F require state Medicaid agencies to restrict the disclosure of information about applicants and recipients to purposes directly connected with the administration of the program. Subpart F requires that state Medicaid agencies have criteria which will ensure the safekeeping of identifying information about Medicaid recipients including medical services provided, social and economic information, medical data, and information received from sources outside the agency which has been used to verify income eligibility. Federal Regulations at 42 CFR 431.301 require statutory legal sanctions for inappropriate

disclosure of information concerning applicants and recipients of medical assistance. Federal regulations applicable to state child health insurance programs (42 CFR 1110) require that states ensure that the privacy protections of 42 CFR 431 Subpart F will apply to participants in child health insurance programs.

### **Public Records Exemption Review**

The Senate staff reviewed the Kidcare public records exemption pursuant to the Open Government Sunset Review Act of 1995. Senate Interim Project Report 2003-221 made the following recommendations:

- Florida's Kidcare public records exemption should be continued, in order to safeguard information about applicants and participants. Public disclosure of identifying information about applicants and participants would negatively affect enrollment in the program.
- The Kidcare public records exemption should be modified to encompass all identifying information about Kidcare participants held by state agencies, without regard to whether or not the information is in an application or in quality reviews or satisfaction surveys, to comply with federal requirements that states safeguard specific identifying information collected about applicants and recipients.
- The Kidcare public records exemption should include legal sanctions to comply with federal regulations for state child health insurance programs which require that state standards for protection of applicant and participant information require that a state impose legal sanctions for improper release of safeguarded information.
- The Kidcare public records exemption should be modified to remove the prohibition against sharing information among entities administering the program.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 409.821, F.S., to make any information that identifies an applicant or enrollee in the Florida Kidcare program and that is held by the Agency for Health Care Administration, the Department of Children and Family Services, the Department of Health, or the Florida Healthy Kids Corporation confidential and exempt from s. 119.07, F.S., and Article I, s. 24(a) of the State Constitution. The confidential and exempt information may be disclosed to another governmental entity only if the disclosure is directly related to the KidCare program. The receiving entity must maintain the confidential and exempt status of the information received. The written consent required of the parent or guardian for the release of the confidential information other than to another governmental entity is expanded to include a child whose disability of nonage has been removed pursuant to ch. 743, F.S. The exemption applies to any information identifying an applicant or enrollee in the Florida Kidcare program held by the above entities before, on, or after the effective date of the exemption. Violations of the section are a second-degree misdemeanor, and are punishable as provided in ss. 775.082 or 775.083, F.S. The exemption is repealed October 2, 2008, unless reviewed and saved from repeal by the Legislature.

**Section 2.** Provides legislative findings that it is both a public necessity for identifying information about Kidcare applicants and enrollees be held confidential and exempt from public disclosure in order to protect sensitive personal, financial, and medical information, and that the expansion of the exemption to include identifying information in records other than the application is necessary for the efficient administration of the program. The basis for this finding is that without the exemption, information identifying an applicant or enrollee would be available pursuant to a records request and that release of the information would cause an unwarranted invasion of the life and privacy of the applicant or enrollee. The section sets forth the legislative finding that the records exemption is necessary for the effective and efficient administration of the program since release of the information would cause applicants to be less inclined to apply for the program. Further, the section articulates the finding that federal law requires identifying information to be held confidential and exempt from public disclosure.

**Section 3.** Provides that the bill takes effect upon becoming a law.

#### **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:**

The Division of Statutory Revision identified s. 409.821, F.S., as an exemption that was subject to review under the Open Government Sunset Review Act during the 2002-2003 legislative interim. The exemption found in the section will repeal October 2, 2003, unless the Legislature abrogates the repeal.

Under s. 119.15(3)(b), F.S., an exemption is “substantially amended” if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. Where an exemption is substantially amended, the Open Government Sunset Review Act requires another review and repeal date because, in effect, an existing exemption that has been “substantially amended” is a new exemption. Existing exemptions that are not substantially amended are not subject to this requirement.

This bill substantially amends the current exemption and, therefore, it is necessary to insert another review and repeal date to meet the requirements of the Open Government Sunset Review Act. This bill contains a provision requiring future review and sets a repeal date of October 2, 2008. Furthermore, it should be noted that this exemption is subject to constitutional requirements for new exemptions. Article I, s. 24 of the State Constitution requires the bill to contain a statement of public necessity, which this bill has, and requires a two-thirds vote of each house of the Legislature for the exemption to be enacted.

**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:**

This bill will allow state agencies administering the Kidcare program to safeguard identifying information contained in Kidcare records, to ensure efficient administration of the program and ensure compliance with the requirements of federal law and regulations.

The Agency for Health Care Administration and the Department of Children and Families report that the bill will not have a significant fiscal impact on the agency.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.