

By the Committees on Judiciary; Health, Aging, and Long-Term Care; and Senator Saunders

308-2318-03

1 A bill to be entitled
2 An act relating to public records and meetings;
3 creating s. 381.04091, F.S.; providing that
4 patient records obtained by and other documents
5 identifying a patient by name and contained in
6 patient safety data held by the Florida Center
7 for Excellence in Health Care are exempt from
8 public-record requirements; providing that
9 meetings held by the center at which such
10 information is discussed are exempt from
11 public-meeting requirements; authorizing the
12 release of information under specified
13 circumstances, including the release to a
14 health care research entity or licensed health
15 insurer; providing for future legislative
16 review and repeal under the Open Government
17 Sunset Review Act of 1995; providing a
18 statement of public necessity; providing a
19 contingent effective date.

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

23 Section 1. Section 381.04091, Florida Statutes, is
24 created to read:

25 381.04091 Public records exemption for patient safety
26 data.--

27 (1)(a) Information that identifies a patient contained
28 in patient safety data or other records held pursuant to s.
29 381.0409 by the Florida Center for Excellence in Health Care
30 are confidential and exempt from s. 119.07(1) and s. 24(a),
31 Art. I, of the State Constitution. Information made

1 confidential and exempt by this subsection may be disclosed
2 only:
3 1. With the express written consent of the patient or
4 patient's legally authorized representative in compliance with
5 any federal or state law;
6 2. By court order upon a showing of good cause;
7 however, in no event shall such information be discoverable or
8 admissible for any purpose in a civil action for damages; or
9 3. To a health research entity or licensed health
10 insurer, if the entity or insurer seeks the records or data
11 pursuant to a research protocol approved by the center,
12 maintains the records or data in accordance with the approved
13 protocol, and enters into a purchase and data-use agreement
14 with the center, the fees provisions of which are consistent
15 with s. 119.07(1)(a). The center may deny a request for
16 records or data if the protocol provides for intrusive
17 follow-back contracts, has not been approved by a human
18 institutional review board, does not plan for the destruction
19 of confidential records after the research is concluded, is
20 administratively burdensome, or does not have scientific
21 merit. The agreement must restrict the release of any
22 information that would permit the identification of persons,
23 must limit the use of records or data to the approved research
24 protocol, and must prohibit any other use of the records or
25 data. Copies of records or data issued pursuant to this
26 subparagraph remain the property of the center.
27 (b) Any portion of a meeting held by the Florida
28 Center for Excellence in Health Care during which such
29 information is discussed is exempt from s. 286.011 and s.
30 24(b), Art. I of the State Constitution. The provisions of
31 this section apply to those portions of the minutes of such

1 meetings which contain information made confidential and
2 exempt by this section.

3 Section 2. Section 381.04091, Florida Statutes, is
4 subject to the Open Government Sunset Review Act of 1995 in
5 accordance with section 119.15, Florida Statutes, and shall
6 stand repealed on October 2, 2008, unless reviewed and saved
7 from repeal through reenactment by the Legislature.

8 Section 3. The Legislature finds that it is a public
9 necessity that information contained in public safety data, as
10 defined in section 381.0409, Florida Statutes, and patient
11 records that are of a sensitive and personal nature concerning
12 individuals and entities be protected when the release of such
13 information would be defamatory to such individuals or
14 entities or cause unwarranted damage to the good name or
15 reputation of such individuals or entities. In addition, the
16 Legislature finds that it is a public necessity that records
17 be protected and meetings be closed to the public when the
18 administration of a governmental program otherwise would be
19 significantly impaired. The information contained in patient
20 safety data held by the Florida Center for Excellence in
21 Health Care includes patient safety events, as defined in
22 section 381.0409, Florida Statutes, and patient records and
23 other information of a sensitive and personal nature relating
24 to patients. The release of such information would be
25 defamatory to such individuals or could cause unwarranted
26 damage to the name or reputation of such individuals. It is
27 also a public necessity that any portion of a meeting of the
28 center be closed when such sensitive and personal information
29 relating to data, reports, records, memoranda, or analyses of
30 patient safety events or the corrective actions taken in
31 response to such patient safety events is discussed. If such

1 meetings were not closed, information would be released which
2 would be defamatory to individuals or entities and cause
3 unwarranted damage to their names or reputations; or
4 information would be released which would reveal details
5 regarding patient safety events, thus undermining the health
6 care quality assurance process and internal risk management
7 programs implemented by health care practitioners or health
8 care facilities and inhibiting the rigor and effectiveness of
9 corrective actions taken in response to such patient safety
10 events, including changes in practices and procedures which
11 may be implemented by health care practitioners and health care
12 facilities to prevent adverse incidents. Further, such
13 information concerning internal risk management programs is
14 otherwise exempt from public disclosure. It is clear that the
15 willingness of a health care practitioner or health care
16 facility to voluntarily submit patient safety data to the
17 center for analysis and possible improvement of patient safety
18 in order to prevent patient safety events or adverse incidents
19 may be impeded unless those portions of meetings during which
20 such information is discussed are closed to the public to
21 avoid disclosure of such information. The unwillingness of
22 health care practitioners and health care facilities to submit
23 patient safety data to the center would interfere with the
24 administration and effectiveness of the efforts of the Florida
25 Center for Excellence in Health Care to reduce and prevent
26 future patient safety events or future adverse incidents.

27 Section 4. This act shall take effect upon becoming a
28 law if CS for CS/SB 562 and SB 1912 or similar legislation is
29 adopted in the same legislative session or an extension
30 thereof and becomes law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill CS/566

This Committee Substitute revises the text of the bill to conform to current drafting practices. This Committee Substitute also provides that when such records are disclosed pursuant to a court order, those records cannot be admitted in a civil action.