

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 997 Public Records/Health Care
SPONSOR(S): Harrell
TIED BILLS: HB 989 **IDEN./SIM. BILLS:** SB 1784 (i), SB 2390 (c)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Standards (Sub)		Rawlins	Collins
2) Health Care			
3) State Administration			
4)			
5)			

SUMMARY ANALYSIS

This bill allows the Department of Health to disclose a patient's identity in the information or records reported under s. 893.055, F.S., which is otherwise confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, to the following:

- (a) A practitioner defined under Chapter 893, F.S., who requests information and certifies that it is necessary to provide medical treatment to a current patient;
- (b) A pharmacist licensed in this state who requests information and certifies that it is to be used to dispense controlled substances to a current patient;
- (c) A state or federal criminal justice agency that enforces laws relating to drugs and that is engaged in a specific investigation;
- (d) An employee or agent of the Department of Health who is involved in a specific investigation involving a violation of rules regulating the alleged violator, the rules of the department, or the rules of a board regulating the alleged violator; or
- (e) The patient, for purposes of checking the information for accuracy.

This bill ordains that any information obtained not be used for the requestor's personal advantage, and it disallows the requestor from revealing any information obtained except in a prosecution or administrative hearing for a violation of state or federal law. The information obtained, however, may be used to provide medical treatment to a current patient or to dispense controlled substances to a current patient. A practitioner or pharmacist authorized to obtain information is not liable for either accessing or failing to access such information. Requestors obtaining information that would identify a patient must maintain the confidentiality of the information.

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

The effective date of this bill is linked to the passage of HB 989 or similar legislation.

This exemption is *not* made subject to the Open Government Sunset Review Act of 1995.¹ The Open Government Sunset Review Act of 1995 established a review and repeal process for public record and meeting exemptions created after 1995. That process requires that in the fifth year after enactment of a new exemption, the exemption will expire unless the Legislature reviews and reenacts it.

¹ Section 119.15, F.S.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | N/A <input 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:

Section 24, Art. I of the State Constitution provides that “[e]very person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf.” This bill limits a person’s right of access to records.

B. EFFECT OF PROPOSED CHANGES:

Section 893.055, F.S., created in HB 989, by Representative Harrell, provides that on or after January 1, 2004, a person issuing a prescription or dispensing a Schedule II, Schedule III, or Schedule IV controlled substance² to an individual 16 years or older, must comply with specified criteria and information recorded and reported under the prescription-monitoring system.

HB 989 imposes further limitations, restrictions, and requirements upon the dispensing of a controlled substance by a pharmacist. A prescription for a Schedule II controlled substance may be dispensed only upon the written prescription of a practitioner except in an emergency as defined by departmental regulation, and the supply of the controlled substance dispensed would now be limited to no more than that required for a 48-hour period. A pharmacist, prior to dispensing a controlled substance listed in Schedule II, Schedule III, or Schedule IV to an individual, would have to obtain suitable identification (i.e., containing the photograph, printed name, and signature of the individual). The pharmacist would now be required to document in a logbook the individual’s identity, consisting of printed name, address, phone number (if available), driver’s license or other suitable identification number, and the signature of the person obtaining the controlled substance. Limitations are imposed restricting the dispensing of no more than a 30-day supply of a Schedule III controlled substance obtained via an oral prescription.

HB 989 establishes an electronic system for monitoring the prescribing and dispensing of controlled substances. It does provide reporting exceptions such as a controlled substance administered (i.e., single dose) by a health care practitioner directly to a patient, a controlled substance dispensed to a patient less than 16 years of age, or a controlled substance dispensed to an in-patient of a facility with an institutional pharmacy permit. A pharmacy with a community pharmacy permit would be required to report either information on dispensed controlled substances, transmitted electronically, to the department or to an agency authorized to receive it.

In addition, HB 989 requires that the Department of Health to develop a “counterfeit-proof prescription blank” for use by practitioners who prescribe the previously listed monitored substances. The department must cover all costs.

² A Schedule II controlled substance “has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence.” Section 893.03(2), F.S.

HB 989 provides appropriations from the General Revenue Fund to the Administrative Trust Fund for the purposes of implementing HB 989.

PUBLIC RECORDS LAW

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1) (a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

This bill creates a public records exemption for the patient's identity which is reported under s. 893.055,³ or contained in the Department of Health's electronic system for monitoring the prescription of controlled substances. Additionally, the public records exemption is created in an undesignated section of law.

This bill allows for exceptions to the public records exemption. The Department of Health may disclose a patient's identity in the information or records reported under s. 893.055, F.S., or reported in the Department of Health's electronic monitoring system to the following:

- A practitioner⁴ who requests the information and certifies that the requested information is necessary in order to provide medical treatment to a current patient;
- A pharmacist⁵ who requests the information and certifies that the requested information will be used to dispense a controlled substance to a current patient;
- A criminal justice agency,⁶ which is involved in a specific investigation involving a violation of law;
- A Department of Health (DOH) employee or agent involved in a specific investigation involving a violation of the chapter regulating the alleged violator, the rules of DOH, or the rules of a board regulating the alleged violator; or
- The patient, for purposes of checking the information for accuracy.

A practitioner, pharmacist, or other agency that obtains information reported under s. 893.055, F.S., or contained in the Department of Legal Affairs' electronic monitoring system must maintain the confidential and exempt status of the information. Any person who obtains such information may not use that information to his or her own personal advantage and may not reveal such information.

The bill provides a third degree felony penalty for violating the provisions of subsection (2).

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the exemption is necessary in order to facilitate the Department of Legal Affairs' "...efforts to maintain compliance with the state's drug laws by the accurate and timely reporting by health care practitioners of potential drug diversion without compromising a patient's privacy." The exemption facilitates the sharing of information between health care practitioners so that the practitioners may appropriately identify and evaluate a patient's risk for drug diversion and the resulting abuse of controlled substances without compromising a patient's privacy.

The effective date of this bill is linked to the passage of HB 989 or similar legislation.

³ HB 989 creates s. 893.055.

⁴ Section 893.02(19), F.S., defines "practitioner" as "a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopathic physician licensed pursuant to chapter 459, a naturopath licensed pursuant to chapter 462, or a podiatric physician licensed pursuant to chapter 461, provided such practitioner holds a valid federal controlled substance registry number."

⁵ The pharmacist must be licensed in this state.

⁶ Section 119.011(4), F.S., defines "criminal justice agency" as "any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections."

This exemption is *not* made subject to the Open Government Sunset Review Act of 1995.⁷ The Open Government Sunset Review Act of 1995 established a review and repeal process for public record and meeting exemptions created after 1995. That process requires that in the fifth year after enactment of a new exemption, the exemption will expire unless the Legislature reviews and reenacts it.⁸

C. SECTION DIRECTORY:

Section 1. Creates an undesignated section of law, providing that a patient's identity, as reported pursuant to s. 893.055, F.S., is confidential and exempt from the provisions of s. 119.01(1), F.S., and s. 24(a), Art. I of the State Constitution.

Section 2. Creates an undesignated section of law, providing that the Department of Health may disclose a patient's identity in the information reported pursuant to s. 89.055, F.S., whose identity is otherwise confidential to a health care practitioner, a pharmacist, a criminal justice agency, an employee or agent of the Department of Health, or the patient defined pursuant to chapter 893, F.S.; specifies that a person who obtains information under this section may not use the information for his or her personal gain or reveal any information; specifying that violation of the subsection is a felony in the third degree; and limits practitioner or pharmacist liability for accessing or failing to access such information.

Section 3. Creates an undesignated section of law, providing that a practitioner, pharmacist, or other agency that obtains information reported pursuant to s. 893.055, F.S., which identifies a patient must maintain the confidentiality of such information pursuant to ss. 456.057 and 465.017, F.S.

Section 4. Creates an undesignated section of law, providing for a public necessity statement

Section 5. Provides that the bill shall take effect on the effective date of HB 989 or similar legislation establishing an electronic system to monitor the prescribing of controlled substances, if such bill or legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments" section.

2. Expenditures:

See "Fiscal Comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁷ Section 119.15, F.S.

⁸ The expiration date for such an exemption would have been October 2, 2009.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Health, this bill has no fiscal impact to the department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is suggested that the language of the bill amend a current statute rather than creating an undesignated section of law. As well, it is suggested to include language to provide for the requirements of the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 established a review and repeal process for public record and meeting exemptions created after 1995. That process requires that in the fifth year after enactment of a new exemption, the exemption will repeal unless the Legislature reviews and reenacts it.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES