

By Senator Jones and Saunders

13-2663-03

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  
5           documents identifying a patient by name and  
6           contained in patient safety data held by, the  
7           Florida Center for Excellence in Health Care  
8           are exempt from public-record requirements;  
9           providing that meetings held by the center at  
10          which such information is discussed are exempt  
11          from public-meeting requirements; authorizing  
12          the 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.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
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 the patient's legally authorized representative in compliance  
5 with 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  
12 care 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 July 1, 2003, if  
28 SB \_\_\_\_ or similar legislation is adopted in the same  
29 legislative session or an extension thereof and becomes law.

30  
31

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

SENATE SUMMARY

Provides that patient records obtained by, and other documents identifying a patient by name and contained in patient safety data held by, the Florida Center for Excellence in Health Care are exempt from public-record requirements. Provides that meetings held by the center at which such information is discussed are exempt from public-meeting requirements. Authorizes the release of information under specified circumstances, including the release to a health care research entity or licensed health insurer. Provides for future legislative review and repeal. Provides a statement of public necessity.