

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: SB 4-C

SPONSOR: Senator Jones and Saunders

SUBJECT: Public Records and Meetings

DATE: July 9, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes information that identifies a patient that is contained in patient safety data, as defined in s. 381.0409, F.S., which is held by the Florida Center for Excellence in Health Care and in other records maintained by the center confidential and exempt from the Public Records Law. Any portion of a meeting held by the Florida Center for Excellence in Health Care during which such information is discussed is made exempt from the Public Meetings Law requirements. The bill specifies the conditions under which the confidential and exempt information may be disclosed.

Such Public Records and Meetings Law exemptions stand repealed on October 2, 2008, in accordance with the Open Government Sunset Review Act of 1995. Legislative findings of public necessity for the Public Records and Meetings Law exemptions are specified. The bill provides a contingent effective date upon becoming a law.

This bill creates section 381.04091, Florida Statutes, and two undesignated sections of law.

II. Present Situation:

Public Records Law

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., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies. While the state constitution provides that records and meetings 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. Article I, s. 24, Fla. Const., 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. Article I, s. 24, Fla. Const., provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, 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 or meetings 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.

Governor’s Select Task Force on Healthcare Professional Liability Insurance

In recognition of the problems with the affordability and availability of medical malpractice insurance, Governor Bush appointed the Governor’s Select Task Force on Healthcare Professional Liability Insurance on August 28, 2002, to address the impact of skyrocketing liability insurance premiums on health care in Florida. The Task Force was charged with making recommendations to prevent a future rapid decline in accessibility and affordability of health care in Florida and was further charged to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31, 2003.

The Task Force had ten meetings at which it received testimony and discussed five major areas: (1) health care quality; (2) physician discipline; (3) the need for tort reform; (4) alternative dispute resolution; and (5) insurance premiums and markets. The final report of the Task Force includes findings and 60 recommendations to address the medical malpractice crisis in Florida. The reports and information received by the Task Force, as well as transcripts of the meetings, were compiled into thirteen volumes that accompany the main report.

The following recommendations relating to health care quality are included in the final report of the Task Force.

Recommendation 1. The Legislature should establish a Patient Safety Authority, or an entity similar in concept, as both a short-term and long-term strategy to improve patient safety. There are two options that should be considered. The first option, which is recommended by the Institute of Medicine (IOM), is to have two systems, one for the mandatory reporting of adverse events and another system for the voluntary reporting of

near misses. The second option is similar to the Patient Safety Authority established and existing in Pennsylvania, which analyzes all adverse events and near misses in that state. Experts employed by both systems would analyze data received and make recommendations about how to reduce these adverse events and near misses. Information would not be subject to discovery in lawsuits.

Recommendation 2. The Legislature should timely develop or adopt statewide electronic medical records and protocols for a physician medication ordering system. The system should be developed collaboratively with hospitals, physicians, and other healthcare providers. The physician medication ordering system should be implemented first. The system could be implemented initially with a web-based data exchange platform which establishes interconnectivity among providers. Another possibility is to begin with business functions, which provide an early return on investment, and then include clinical functions.

Recommendation 3. The Legislature should consider creating a statutory public-private non-profit entity that would administer the Patient Safety Authority, statewide electronic medical records, and build an information technology infrastructure to support the delivery of healthcare that would include a statewide physician medication ordering system. Funding could possibly come from a \$1 per year surcharge on all health professional licenses; all hospital, ambulatory care surgery center, nursing home, home health agency, and birth center discharges; and all individuals in managed care plans and insurance plans licensed under chapters 627 and 640, Florida Statutes. Healthcare providers, insurers, businesses, and government would be represented on the governing board of directors. Options for implementation include:

- Affiliating with a university for the analysis of voluntarily reported adverse events and “near misses.”
- Contracting with an Information Technology firm(s) for a statewide physician medication ordering system, web-based platform for health provider interconnectivity, and electronic patient record.
- Developing a business plan and future financing strategy to supplement the \$1 annual surcharge, which will likely be necessary to achieve full implementation.
- Including in the business plan a strategy to begin with computerizing business functions, for providers to quickly achieve cost-savings due to automation efficiencies, and then include clinical functions.

Recommendation 6. The Legislature should require each hospital and ambulatory surgery center to have a patient safety plan, a patient safety committee, and a patient safety officer. Members of the public should have representation on patient safety committees.

Recommendation 7. The Legislature should require healthcare providers to notify patients who experience serious medical injuries to be notified of the injury in person.

Recommendation 8. The Legislature should examine the feasibility of using Medicaid funding to create a pilot project for an electronic medical record and a physician medication ordering system for Medicaid patients.

Recommendation 9. The Legislature should examine the feasibility of developing a process in the Insurance Code for hospitals and other healthcare facilities to receive malpractice insurance discounts if they implement certified patient safety programs.

Recommendation 10. The Legislature should establish a high-technology simulation center for use by all health providers. Florida should encourage use of this center by practitioners in other states to help offset the costs for the center.

Recommendation 11. The Legislature should require all medical schools, nursing schools, and allied health schools to include in their curricula courses on patient safety and patient safety improvement.

National Center for Patient Safety

One entity in Florida has been designated as a national center for patient safety. A partnership between the University of South Florida Health Sciences Center and the Veteran's Health Administration has resulted in the formal designation of the University of South Florida as the State's only National Center for Patient Safety Research and Evaluation by the Federal Agency for Healthcare Research and Quality, and of the partnership as a National Patient Safety Center of Inquiry by the Veteran's Administration.

Hospital Adverse Incident Reporting

Ambulatory surgical centers and hospitals must be licensed under chapter 395, F.S. Chapter 395, F.S., imposes requirements on ambulatory surgical centers and hospitals that include inspection and accreditation, and reporting of adverse incidents that result in serious patient injury.

Ambulatory surgical centers and hospitals, under s. 395.0197(8), F.S., must report to the Agency for Health Care Administration (AHCA) the following incidents within 15 calendar days after they occur: death of a patient; brain or spinal damage to a patient; performance of a surgical procedure on the wrong patient; performance of a wrong-site surgical procedure; performance of a wrong surgical procedure; performance of a surgical procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition; surgical repair of damage resulting to the patient from a planned surgical procedure where damage is not a recognized specific risk, as disclosed to the patient and documented through the informed consent process; or performance of procedures to remove unplanned foreign objects remaining in a patient following surgery.

Under s. 395.0197(8), F.S., the incident reports filed with AHCA may not be made available to the public under s. 119.07(1), F.S., or any other law providing access to public records, nor be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the Department of Health (DOH) or the appropriate regulatory board. The incident reports may not be made available to the public as part of the records of investigation for and prosecution in disciplinary proceedings that are made available to the public. DOH or the appropriate regulatory board must make available, upon written request by a health care professional against whom probable cause has been found, any such records which form the basis of the determination of probable cause. DOH must review each incident and determine

whether it potentially involved conduct by the health care professional who is subject to disciplinary action under the provisions of s. 456.073, F.S.

Florida Center for Excellence in Health Care

SB 4-C creates s. 381.0409, F.S., to establish the Florida Center for Excellence in Health Care. The center will be responsible for performing activities and functions that are designed to improve the quality of health care delivered by health care facilities and health care practitioners. One of the functions the center is to perform is the collection, analysis, and evaluation of patient safety data for the purpose of recommending changes in practices and procedures which may be implemented to prevent future adverse incidents and patient safety events. "Patient safety data" is defined to mean data, reports, records, memoranda, or analyses of patient safety events and adverse incidents reported by a licensed facility pursuant to s. 395.0197, F.S., which are submitted to the Florida Center for Health Care Excellence or the corrective actions taken in response to such patient safety events or adverse incidents.

III. Effect of Proposed Changes:

SB 4-C creates s. 381.04091, F.S., to provide that patient information contained in patient safety data, as defined in s. 381.0409, F.S., which is held by the Florida Center for Excellence in Health Care, is confidential and exempt from the Public Records Law. Information that identifies a patient in other records held by the center is also confidential and exempt from the Public Records law. Any portion of a meeting held by the Florida Center for Excellence in Health Care during which such information is discussed is exempt from the Public Meetings law. The portions of the minutes of such meetings are also confidential and exempt.

The bill provides that information made confidential and exempt shall be disclosed:

- With the express written consent of the patient or the patient's legally authorized representative in compliance with any federal or state law;
- By court order upon a showing of good cause, however, such information cannot be discoverable or admissible for any purpose in a civil action for damages; or
- To a health research entity or licensed health insurer, if the entity or insurer seeks the records or data pursuant to a research protocol approved by the center, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the center, the fees provisions of which are consistent with those under the Public Records Law. The center may deny a request for records or data if the protocol provides for intrusive follow-back contracts, has not been approved by a human institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of any information which would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued remain the property of the center.

The section is made subject to the Open Government Sunset Review Act of 1995 and stands repealed on October 2, 2008, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for the public records and meetings exemptions created in the bill. The Legislature finds that it is a public necessity that information that would identify a patient contained in public safety data or other records, held pursuant to s. 381.0409, F.S., must be confidential and exempt from s. 119.07(1) and 24(a), Art. I of the State Constitution. Such information is of a sensitive and personal nature concerning individuals and entities and must be protected because the release of that information would be defamatory to such individuals or entities or cause unwarranted damage to the good name or reputation of such individuals or entities. The Legislature finds that it is a public necessity that records be protected and meetings be closed to the public when the administration of a governmental program otherwise would be significantly impaired. The information contained in the patient safety data held by the Florida Center for Excellence in Health Care include patient records and other information of a sensitive and personal nature relating to patients. The release of such information would be defamatory to such individuals and it is a public necessity that any portion of a meeting of the center be closed when such personal and sensitive information relating to data, reports, records, memoranda, or analyses of patient safety events or the corrective actions taken in response to such patient safety events is discussed. If such information would be released it would reveal details regarding patient safety events, thus undermining the health care quality assurance process and internal risk management programs implemented by health care practitioners and facilities. The willingness of a health care practitioner or facility to voluntarily submit patient safety data to the center may be impeded unless those portions of meeting in which such information is discussed are closed to the public to avoid disclosure. The unwillingness of health care practitioners and facilities to submit patient safety data to the center would interfere with the administration and effectiveness of the center to reduce and prevent future patient safety events or adverse incidents.

The bill provides a contingent effective date upon becoming a law if Senate Bill 2-C or similar legislation is adopted in the same legislative session or an extension thereof and becomes 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:

This bill creates an exemption from the Public Records and Meetings Laws for information contained in patient safety data and patient records held by the Florida Center for Health Care Excellence created in Senate Bill 2-C.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
