

By Senators Jones and Saunders

13-2712-03

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.

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

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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 that would identify a patient  
10 contained in public safety data or other records held pursuant  
11 to section 381.0409, Florida Statutes, must be confidential  
12 and exempt from section 119.07(1), Florida Statutes, and  
13 Section 24(a), Article I of the State Constitution. Such  
14 information is of a sensitive and personal nature concerning  
15 individuals and entities and must be protected because the  
16 release of that information could be defamatory to such  
17 individuals or entities or cause unwarranted damage to the  
18 good name or reputation of such individuals or entities. In  
19 addition, the Legislature finds that it is a public necessity  
20 that records be protected and meetings be closed to the public  
21 when the administration of a governmental program otherwise  
22 would be significantly impaired. The information contained in  
23 patient safety data held by the Florida Center for Excellence  
24 in Health Care includes patient safety events, as defined in  
25 section 381.0409, Florida Statutes, and patient records and  
26 other information of a sensitive and personal nature relating  
27 to patients. The release of such information would be  
28 defamatory to such individuals or could cause unwarranted  
29 damage to the name or reputation of such individuals. It is  
30 also a public necessity that any portion of a meeting of the  
31 center be closed when such sensitive and personal information

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

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1 Section 4. This act shall take effect upon becoming a  
2 law if SB 2-C or similar legislation is adopted in the same  
3 legislative session or an extension thereof and becomes law.  
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6 SENATE SUMMARY

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