

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1733 (PCB SA 04-05) Home Medical Equipment Provider/OGSR
SPONSOR(S): State Administration and Benson
TIED BILLS: none **IDEN./SIM. BILLS:** SB 674 (i)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration	4 Y, 0 N	Bond	Everhart
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

This bill reenacts and narrows the public records exemption for certain medical records relating to patients of a licensed Home Medical Equipment Provider, held by the Agency for Healthcare Administration, which will repeal on October 2, 2004, if this bill does not become law.

This bill may have a minimal non-recurring positive fiscal impact on state government expenditures. This bill does not appear to have a fiscal impact on local governments.

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

STORAGE NAME: h1733.sa.doc
DATE: March 8, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

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

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

In 1999, Florida enacted legislation which requires licensure of home medical equipment providers.¹ Licensure is through the Agency for Healthcare Administration (AHCA). A home medical equipment provider is a business that provides certain types of durable medical equipment² to individuals. AHCA licensure activities include oversight, complaint investigation, and discipline of errant providers.

AHCA receives confidential and exempt information primarily through complaints filed by patients of home medical equipment providers, and through investigation of such complaints. AHCA may also receive confidential and exempt information while auditing licensed providers. AHCA receives and reviews patient medical files to ensure that appropriate equipment, supplies, and service are provided to patients. Section 400.945, F.S., provides a public records exemption for medical records of such patients that are received by AHCA.³

The current exemption applies to "medical and other information about patients". This language may be construed to be overly broad. Article I, s. 24, Fla.Const., requires that a public records exemption may be no broader than necessary to accomplish the stated purpose of the law. It is unclear what the broad term "other information" makes exempt.

Current law provides for future review and repeal of the public records exemption for medical records relating to patients of a licensed Home Medical Equipment Provider. Pursuant to the Open Government Sunset Review Act of 1995, s. 400.945, F.S., will repeal on October 2, 2004, unless reenacted by the Legislature.

¹ Part X of ch. 400, F.S., ss. 400.92-.957, F.S., ch. 99-189, L.O.F.

² "Home medical equipment" is defined as: "includes any product as defined by the Federal Drug Administration's Drugs, Devices and Cosmetics Act, any products reimbursed under the Medicare Part B Durable Medical Equipment benefits, or any products reimbursed under the Florida Medicaid durable medical equipment program. Home medical equipment includes oxygen and related respiratory equipment; manual, motorized, or customized wheelchairs and related seating and positioning, but does not include prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner; motorized scooters; personal transfer systems; and specialty beds, for use by a person with a medical need."

³ At a meeting with AHCA officials, they gave an example of a typical complaint: An obese person who was a patient of a home medical equipment provider complained about the wheelchair that was provided. The wheelchair was of regular size, rather than one designed and built for the very obese. To investigate the complaint, AHCA required the provider to provide AHCA with the patient's medical records in order to determine if the equipment and services provided by the licensed provider were proper for the circumstances.

Effect of Bill

This bill removes the repeal date, thereby reenacting the public records exemption.

This bill also narrows the exemption by changing the overly broad term "medical and other information", which term describes the records that are exempt, to the slightly narrower and more accurate term of "medical and personal identifying information". The revised language is consistent with other public records exemptions, and is consistent with current agency interpretation and use of the exemption.

C. SECTION DIRECTORY:

Section 1 amends s. 400.945, F.S., to remove the portion repealing the section on October 2, 2004, and to narrow the exemption.

Section 2 provides that this bill has an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill may represent a minimal non-recurring positive impact on state government expenditures. A bill enacting or amending public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills being reviewed under the Open Government Sunset Review process, the cost of such training will be incurred if the bill does not pass, as employees would have to be informed that formerly exempt records are now open. Because this bill eliminates the repeal, employee training activities will be avoided, and state government may recognize a minimal nonrecurring decrease in expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995,⁴ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (*e.g.*, allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

⁴ Section 119.15, F.S.