

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 399 w/CS Public Records/Controlled Substances
SPONSOR(S): Harrell
TIED BILLS: HB 397 w/CS **IDEN./SIM. BILLS:** SB 578(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Standards (Sub)	9 Y, 1 N	Garner	Collins
2) Health Care	20 Y, 2 N w/CS	Garner	Collins
3) State Administration			
4) Appropriations			
5)			

SUMMARY ANALYSIS

This bill allows the Department of Health to disclose a patient's or the prescriber's identity in the information of 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) The Agency for Health Care Administration when it has initiated a review of specific identifiers of Medicaid fraud and abuse;
- b) A state or federal criminal justice agency that enforces laws relating to drugs and that is engaged in a specific investigation involving a violation of law;
- c) A practitioner defined under Chapter 893, F.S., and an employee of the practitioner, who requests such information and certifies that it is necessary to provide medical treatment to a current patient, subject to the patient's written consent;
- d) A pharmacist licensed in this state, or a pharmacy intern or pharmacy technician designated by the pharmacists, who requests information and certifies that it is to be used to dispense controlled substances to a current patient;
- e) The patient who is identified in the record, upon a written request, for the purpose of verifying that information.

This bill ordains that any person who knowingly violates the provisions commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, F.S. The bill also states that this provision is subject to the Open Government Sunset Review Act of 1995, and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal by the Legislature.

The bill states that the Legislature finds that it is a public necessity that personal identifying information of the patient, a practitioner as defined in s. 893.02, F.S., or a pharmacist as defined in s. 465.003, F.S., contained in records reported under s. 893.055, F.S., must be confidential and exempt.

The effective date of this bill is July 1, 2005, and is linked to the passage of HB 397 or similar legislation.

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

STORAGE NAME: h0399b.hc.doc
DATE: March 19, 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:

B. EFFECT OF PROPOSED CHANGES:

The bill creates a public records exemption for the electronic monitoring system for prescription of controlled substances in Schedule II, III, and IV. The bill also requires that the personal identifying information of a patient, a practitioner as defined in s. 893.02, F.S., or a pharmacist as defined in s. 465.003, F.S., contained in records reported under s. 893.055, F.S., is confidential and exempt from the requirements of the Public Records Law and s. 24(a), Art. I of the State Constitution.

This bill allows the Department of Health to disclose a patient's or the prescriber's identity in the information of records reported under s. 893.055, F.S., which is otherwise confidential and exempt from the provisions of s.19.07(1), F.S., and s. 24(a), Art. I of the State Constitution, to certain persons.

This bill ordains that any person who knowingly violates the provisions commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, F.S. The bill also states that this provision is subject to the Open Government Sunset Review Act of 1995, and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal by the Legislature.

The bill states that the Legislature finds that it is a public necessity that personal identifying information of the patient, a practitioner as defined in s. 893.02, F.S., or a pharmacist as defined in s. 465.003, F.S., contained in records reported under s. 893.055, F.S., must be confidential and exempt.

The effective date of this bill is July 1, 2005, and is linked to the passage of HB 397 w/CS or similar legislation.

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 record 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.

APPLICATION OF THESE PROVISIONS TO HB 399 w/CS

HB 399 w/CS creates a public records exemption for the patient's and prescriber's identity which is reported under s. 893.055 F.S., or contained in the Department of Health's electronic system for monitoring the prescription of controlled substances.

This bill allows the Department of Health to disclose a patient's or the prescriber's identity in the information of records reported under s. 893.055, F.S., which is otherwise confidential and exempt from the provisions of s.19.07(1), F.S., and s. 24(a), Art. I of the State Constitution, to the following:

- a) The Agency for Health Care Administration when it has initiated a review of specific identifiers of Medicaid fraud and abuse;

- b) A state or federal criminal justice agency that enforces laws relating to drugs and that is engaged in a specific investigation involving a violation of law;
- c) A practitioner defined under Chapter 893, F.S., and an employee of the practitioner, who requests such information and certifies that it is necessary to provide medical treatment to a current patient, subject to the patient's written consent;
- d) A pharmacist licensed in this state, or a pharmacy intern or pharmacy technician designated by the pharmacists, who requests information and certifies that it is to be used to dispense controlled substances to a current patient;
- e) The patient who is identified in the record, upon a written request, for the purpose of verifying that information.

This bill ordains that any person who knowingly violates the provisions commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, F.S. The bill also states that this provision is subject to the Open Government Sunset Review Act of 1995, and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal by the Legislature.

The bill states that the Legislature finds that it is a public necessity that personal identifying information of the patient, a practitioner as defined in s. 893.02, F.S., or a pharmacist as defined in s. 465.003, F.S., contained in records reported under s. 893.055, F.S., must be confidential and exempt.

C. SECTION DIRECTORY:

Section 1. Creates a public record exemption for the personal identifying information contained in records in the electronic monitoring system held by the Department of Health under s. 893.055, F.S.; allows the department to disclose this information to specific persons for specific reasons; creates a penalty for the knowing and willful violation of this section; and establishes a Sunset provision.

Section 2. States that the Legislature finds that it is a public necessity that personal identifying information reported to the Department of Health under s. 893.055, F.S., be held confidential and exempt from disclosure to facilitate and maintain compliance with the state's drug laws pertaining to the distribution of controlled substances.

Section 3. Provides an effective date of July 1, 2005, and is linked to the passage of HB 397 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

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.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 4, 2004, the Subcommittee on Health Standards adopted two amendments to the bill, and then reported the bill favorably to the Committee on Health Care. The amendments include the following:

Amendment #1 – Allows a patient to access the Department of Health's electronic monitoring system as established by HB 397 for the purposes of verifying the information for accuracy and reporting inaccuracies for correction if verified.

Amendment #2 – Makes a technical correction to conform the bill's language based on the changes made by the first amendment.

On March 11, 2004, the Committee on Health Care, by request of the sponsor, removed the amendments recommended by the subcommittee on a negative roll call vote. The Committee on Health Care adopted a strike everything amendment and then reported the bill favorably. The amendment includes the following:

Amendment #3 - This bill allows the Department of Health to disclose a patient's or the prescriber's identity in the information of 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 certain persons or governmental entities.

This bill ordains that any person who knowingly violates the provisions commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, F.S. The bill also states that this provision is subject to the Open Government Sunset Review Act of 1995, and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal by the Legislature.

The bill states that the Legislature finds that it is a public necessity that personal identifying information of the patient, a practitioner as defined in s. 893.02, F.S., or a pharmacist as defined in s. 465.003, F.S., contained in records reported under s. 893.055, F.S., must be confidential and exempt.

The effective date of this bill is July 1, 2005, and is linked to the passage of HB 397 or similar legislation.