

HB 0399

2004

A bill to be entitled

An act relating to public records; exempting from public records requirements information and records reported to the Department of Health under the electronic monitoring system for prescription of controlled substances listed in Schedules II-IV; authorizing certain persons and entities access to patient-identifying and practitioner-identifying information; providing guidelines for the use of such information and penalties for violations; providing for future legislative review and repeal; providing a finding of public necessity; providing a contingent effective date.

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

Section 1. (1)(a) A patient's personal identifying information contained in any record reported under s. 893.055, Florida Statutes, is confidential and exempt from the provisions of s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution.

(b) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) The Department of Health may disclose a patient's or practitioner's identity in the information or records reported under s. 893.055, Florida Statutes, whose identity is otherwise confidential and exempt from the provisions of s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State

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31 Constitution, to the following:

32 (a) A practitioner defined under chapter 893, Florida
 33 Statutes, who requests information and certifies that the
 34 information is necessary to provide medical treatment in
 35 accordance with s. 893.05, Florida Statutes, to a current
 36 patient, subject to the patient's written consent. The
 37 practitioner may designate one person in his or her office to
 38 access the information and records reported under s. 893.055,
 39 Florida Statutes, on the practitioner's patients and provide
 40 information to the practitioner as directed, subject to the
 41 patient's written consent.

42 (b) A pharmacist licensed in this state, or a pharmacy
 43 intern or pharmacy technician designated by the pharmacist, who
 44 requests information and certifies that the requested
 45 information is to be used to dispense controlled substances in
 46 accordance with s. 893.04, Florida Statutes, to a current
 47 patient.

48 (c) A criminal justice agency defined under s. 119.011,
 49 Florida Statutes, which enforces the laws of this state or the
 50 United States relating to drugs and which is engaged in a
 51 specific investigation involving a violation of law. Any member
 52 of a criminal justice agency receiving the information as
 53 authorized in this section shall avoid unauthorized use or
 54 dissemination thereof. Such member receiving the information may
 55 disclose its contents to other persons to the extent that such
 56 disclosure is appropriate to the proper performance of the
 57 official duties of the member making or the person receiving the
 58 disclosure.

59 (d) An employee or agent of the Department of Health who
 60 is involved in a specific investigation involving a violation of

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61 the chapter regulating the alleged violator, the rules of the
 62 Department of Health, or the rules of a board regulating the
 63 alleged violator.

64 (e) An employee of the Agency for Health Care
 65 Administration who is involved in an investigation related to
 66 the agency's responsibility to control fraud and abuse in the
 67 Medicaid program.

68 (3)(a) A person who obtains information under this section
 69 may not use the information to his or her own personal advantage
 70 or reveal any information obtained in the enforcement of law
 71 except in a prosecution or administrative hearing for a
 72 violation of state or federal law or, if applicable, to provide
 73 medical treatment in accordance with s. 893.05, Florida
 74 Statutes, to a current patient or to dispense controlled
 75 substances in accordance with s. 893.04, Florida Statutes, to a
 76 current patient, or to the patient for verifying the accuracy of
 77 such information.

78 (b) Any person who knowingly violates this subsection
 79 commits a felony of the third degree, punishable as provided in
 80 s. 775.082 or s. 775.083, Florida Statutes.

81 (4) A practitioner or pharmacist authorized to obtain
 82 information under this section is not liable for accessing or
 83 failing to access such information.

84 (5) A practitioner, pharmacist, or other person or agency
 85 that obtains information reported under s. 893.055, Florida
 86 Statutes, must maintain the confidentiality of such information
 87 pursuant to ss. 456.057 and 465.017, Florida Statutes, or as
 88 otherwise required by law.

89 Section 2. The Legislature finds that it is a public
 90 necessity that personal identifying information reported to the

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91 Department of Health under s. 893.055, Florida Statutes, be held
 92 confidential and exempt from disclosure because doing so will
 93 facilitate efforts to maintain compliance with the state's drug
 94 laws not only by patients through accurate and timely reporting
 95 by health care practitioners and pharmacists of potential drug
 96 diversion without compromising a patient's privacy, with certain
 97 exceptions, but also by persons authorized to prescribe or
 98 dispense controlled substances through oversight review and
 99 investigation of improper prescribing and dispensing practices.
 100 The exemption for a patient's identity in the information or
 101 records reported under s. 893.055, Florida Statutes, facilitates
 102 the sharing of information between health care practitioners and
 103 pharmacists so that the practitioners and pharmacists may
 104 appropriately identify and evaluate a patient's risk for drug
 105 diversion and the resulting abuse of controlled substances
 106 without compromising a patient's privacy. The Legislature
 107 further finds that the exemption for records identifying a
 108 patient or practitioner within information or records reported
 109 to the Department of Health is a public necessity to protect
 110 health-related information of a sensitive and personal nature.
 111 Matters of personal health are traditionally private and
 112 confidential concerns between a patient and a health care
 113 provider. The private and confidential nature of personal health
 114 matters pervades both the public and private health care
 115 sectors. For these reasons, an individual's expectation of a
 116 right to privacy in all matters regarding his or her personal
 117 health necessitates such exemption. Information relating to
 118 practitioners prescribing or dispensing controlled substances
 119 needs to be kept confidential for criminal justice agencies and
 120 regulatory agencies and departments to properly investigate

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121 potentially improper prescribing or dispensing practices that
122 indicate drug diversion by such practitioners or contributing to
123 drug diversion by a patient without compromising the livelihood
124 of such practitioner with unsubstantiated charges of improper
125 dispensing or prescribing practice. For these reasons, a
126 practitioner's expectation of a right to privacy in the review
127 and investigation of unsubstantiated charges affecting his or
128 her livelihood necessitates such exemption.

129 Section 3. This act shall take effect July 1, 2005, if
130 House Bill 397 or similar legislation establishing an electronic
131 system to monitor the prescribing of controlled substances is
132 adopted in the same legislative session or an extension thereof
133 and becomes law.