

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1411                      Public Records  
**SPONSOR(S):** Benson  
**TIED BILLS:** HB 1409                      **IDEN./SIM. BILLS:**

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| REFERENCE                            | ACTION | ANALYST | STAFF DIRECTOR |
|--------------------------------------|--------|---------|----------------|
| 1) Health Care Regulation Committee  |        | Bell    | Mitchell       |
| 2) Governmental Operations Committee |        |         |                |
| 3) Health & Families Council         |        |         |                |
| 4) _____                             |        |         |                |
| 5) _____                             |        |         |                |

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### SUMMARY ANALYSIS

HB 1411 creates s. 408.0641, F.S., to provide a public records exemption for certain information held by the Florida Health Information Network, Inc established in HB 1409. The exempt information is:

- A patient's medical or health record;
- Trade secrets as defined in s. 688.002, F.S.; and
- Any information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

HB 1411 is linked to HB 1409. HB 1409 creates the "Florida Health Information Network Act" as a nexus towards a public/private partnership that will implement a statewide electronic medical records network.

The bill provides for future review and repeal of the exemption on October 2, 2011, provides a statement of public necessity, and provides a contingent effective date.

**The bill requires a two-thirds vote of the members present and voting for passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – The bill limits access to public records.

**Safeguard Individual Liberty** – The bill provides that patient medical record or health records held by the Florida Health Information Network are private.

#### B. EFFECT OF PROPOSED CHANGES:

HB 1411 creates s. 408.0641, F.S., to provide a public records exemption for certain information held by the Florida Health Information Network Inc. The exempt information is:

- A patient's medical or health record;
- Trade secrets as defined in s. 688.002, F.S.; and
- Any information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

The bill provides for future review and repeal of the exemption on October 2, 2011, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity and provides an effective date.

#### HB 1409

HB 1409 creates the Florida Health Information Network Act as a public/private partnership that will implement a statewide electronic medical records network. It establishes the Florida Health Information Network, Inc., as a not-for-profit corporation. That will be managed by an uncompensated board of directors. The initial board will consist of the current Governor's Health Information Infrastructure Advisory Board (for 18 months).

The primary duties of the Florida Health Information Network, Inc. are to oversee, coordinate, and implement a statewide electronic medical records network. Among the many duties listed in the enabling legislation, the Florida Health Information Network is charged with development of technical standards for electronic medical records and recruiting participants into the network.

The Agency for Health Care Administration (AHCA) will provide oversight on the Florida Health Information Network, Inc.

#### C. SECTION DIRECTORY:

**Section 1.** – Creates s. 408.0641, F.S., to create a public records exemption for a patient's medical records, trade secrets, and any other information that is confidential under state or federal law that are held by the Florida Health Information Network.

**Section 2.** – Provides a statement of public necessity.

**Section 3.** – Provides a contingent effective date.

### 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:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Public Records and Public Meetings Laws**

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution, sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. 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.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995<sup>1</sup> 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:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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,
- Protecting trade or business secrets.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>1</sup> Section 119.15, F.S.