

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	9 Y, 0 N	Bell	Mitchell
2) Governmental Operations Committee	6 Y, 0 N	Williamson	Williamson
3) Health & Families Council	9 Y, 0 N, w/CS	Bell	Moore
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1411 creates a public records exemption for certain information held by the Florida Health Information Network, Inc., established in HB 1409. Information made confidential and exempt includes:

- A patient's medical or health record;
- Trade secrets as defined in the Uniform Trade Secrets Act; 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 that the patient medical records may be disclosed with a patient's written consent and in a medical emergency.

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 records or health records held by the Florida Health Information Network, Inc., are confidential and exempt from public disclosure.

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 confidential and exempt¹ information includes:

- A patient's medical or health record;
- Trade secrets as defined in the Uniform Trade Secrets Act;² 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 that the patient medical records may be disclosed with a patient's written consent and in a medical emergency.

The bill provides for future review and repeal of the exemption on October 2, 2011, pursuant to the Open Government Sunset Review Act.³ It also provides a statement of public necessity and provides a contingent 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, which 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 of the Florida Health Information Network, Inc.

C. SECTION DIRECTORY:

¹ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

² Section 688.002, F.S.

³ Section 119.15, F.S.

Section 1. - Creates s. 408.0641, F.S., to create a public records exemption for the Florida Health Information Network, Inc.

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:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill likely could create a fiscal impact on the Florida Health Information Network, Inc., because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, the Florida Health Information Network, Inc., could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

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:

Vote Requirement

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. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

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 1995⁴ 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

On April 10, 2006 the Health & Families Council adopted one amendment and reported the bill favorably. The amendment corrected a technical error and allows patient medical records to be disclosed with the written consent of the patient or in a medical emergency.

The analysis is drafted to the council substitute.

⁴ Section 119.15, F.S.