

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Health Care Committee

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BILL: SB 510

SPONSOR: Health Care Committee

SUBJECT: Review of Public Records and Public Meetings Exemptions for Nursing Home and Assisted Living Facility Risk Management and Quality Assurance Committee Meetings, Records, and Reports

DATE: December 20, 2005      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Wilson	HE	<b>Favorable</b>
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill reenacts, reorganizes, and clarifies exemptions to the public meetings and public records laws for meetings of nursing home and assisted living facility (ALF) internal risk management and quality assurance committees; for records pertaining to those meetings; and for adverse incident reports filed with the risk manager and administrator of such facilities and with the Agency for Health Care Administration (AHCA).

This bill amends s. 400.119, F.S.

## II. Present Situation:

### Constitutional Access to Public Records and Meetings

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The state's Public Records Act, in ch. 119, F.S., and the public meetings law, in ch. 286, F.S., were first enacted in 1967.<sup>1</sup> These statutes have been amended numerous times since their enactment.

In November 1992, the public affirmed the tradition of government-in-the-sunshine by enacting a constitutional amendment, which guaranteed and expanded the practice. Article I, s. 24 of the State Constitution provides every person with 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

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<sup>1</sup> Chapters 67-125 and 67-356, L.O.F.

the state, or persons acting on their behalf. The section specifically includes the legislative, executive and judicial branches of government and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissions or entities created pursuant to law or the State Constitution. All meetings of any collegial public body must be open and noticed to the public.

The State Constitution authorizes exemptions to the open government requirements and establishes the means by which these exemptions are to be established. Under Art. I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records and meetings.

Under the requirements of the Open Government Sunset Review Act of 1995 (2004), an exemption is to be maintained only if:

- The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- The exemption is necessary for the effective and efficient administration of a governmental program; or
- The exemption affects confidential information concerning an entity.

Exemptions to public records and meetings requirements are strictly construed because the general purpose of open records and meetings requirements is to allow Florida's citizens to discover the actions of their government.

### **The Need for Confidentiality of Nursing Home and Assisted Living Facility Risk Management and Quality Assurance Committee Meetings, Records, and Reports**

The 2001 Legislature required nursing homes to implement an internal risk management and quality assurance program to investigate and analyze the frequency and causes of specific types of adverse incidents. In that same year, the Legislature authorized ALFs to voluntarily establish a risk management and quality assurance program. Both nursing homes and ALFs are required to report adverse incidents to AHCA.

The 2001 Legislature also enacted public records and public meetings exemptions for nursing home and ALF risk management and quality assurance committees' meetings and records related to their work. Under s. 400.119, F.S., records of committee meetings, incident reports filed with the facility's risk manager, notifications to AHCA of the occurrence of an adverse incident, and adverse incident reports submitted to AHCA from the facility are confidential and exempt from the provisions of s. 119.07, F.S., and s. 24(a), Art. I of the State Constitution. The meetings of an internal risk management and quality assurance committee are exempt from the public meetings requirements of s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

The public necessity for the exemptions, when they were enacted, was stated as follows:

*...The Legislature finds that it is in the interests of the health and safety of the public to require long-term care facilities to operate internal risk-management programs and for the Agency for Health Care Administration to review the operation of these programs. The Legislature finds that these programs are*

*effective in reducing risk to residents and improving quality when facility staff have frank and open internal communication regarding potential resident risks and quality-assurance problems and that public access to these discussions or agency records of these discussions will inhibit this frank and open internal communication.*

### **Nursing Home Reporting Requirements**

Under s. 400.147, F.S., every nursing home must establish an internal risk management and quality assurance program to assess resident care practices; review facility quality indicators, facility incident reports, deficiencies cited by AHCA, and resident grievances; and develop plans of action to correct and respond quickly to identified quality deficiencies.

The nursing home administrator is responsible for the internal risk management and quality assurance program. Each program must include the use of incident reports to be filed with the risk manager and the facility administrator. The risk manager must have free access to all resident records of the nursing home. As a part of each internal risk management and quality assurance program, the incident reports must be used to develop categories of incidents which identify problem areas. Once identified, procedures must be adjusted to correct the problem areas.

For purposes of a nursing home reporting to AHCA, the term “adverse incident” means:

- An event over which facility personnel could exercise control and which is associated in whole or in part with the facility's intervention, rather than the condition for which such intervention occurred, and which results in one of the following:
  - Death;
  - Brain or spinal damage;
  - Permanent disfigurement;
  - Fracture or dislocation of bones or joints;
  - A limitation of neurological, physical, or sensory function;
  - Any condition that required medical attention to which the resident has not given his or her informed consent, including failure to honor advanced directives; or
  - Any condition that required the transfer of the resident, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather than the resident's condition prior to the adverse incident;
- Abuse, neglect, or exploitation as defined in s. 415.102, F.S.;
- Abuse, neglect and harm as defined in s. 39.01, F.S.;
- Resident elopement; or
- An event that is reported to law enforcement.

### **Assisted Living Facility Reporting Requirements**

Under s. 400.423, F.S., ALFs are authorized to establish a risk management and quality assurance program to assess resident care practices, facility incident reports, deficiencies cited by

AHCA, adverse incident reports, and resident grievances and to develop plans of action. Every ALF must maintain adverse incident reports. The definition of adverse incident is the same as that for a nursing home with one exception: abuse, neglect and harm, as defined in s. 39.01, F.S., is not included in the definition.

### **Senate Interim Project Report 2006-220**

Section 400.119(5), F.S., specifies that the public meetings and public records exemptions for nursing home and ALF risk management and quality assurance committee meetings, records, and reports are subject to the Open Government Sunset Review Act of 1995, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

Senate Health Care Committee staff reviewed the provisions and applicable law pursuant to the criteria specified in the Open Government Sunset Review Act of 1995 (2004), to determine if the provisions of s. 400.119, F.S., making meetings and specified records of nursing home and ALF internal risk management and quality assurance programs exempt from the Public Meetings Law and Public Records Law, should be continued or modified. Staff sent questionnaires to AHCA, the Department of Veterans Affairs, and public nursing homes and ALFs. Staff consulted with representatives of nursing home and ALF providers and other interested parties in conducting the Open Government Sunset Review of s. 400.119, F.S. The state agencies and the representatives of nursing homes and ALFs said that the exemptions are necessary. The exemptions allow AHCA to oversee the quality of care provided by the nursing homes and ALFs it licenses, and they allow the Department of Veteran's Affairs effectively to administer the five nursing homes and one ALF it operates. The exemptions also protect information of a sensitive personal nature concerning residents and practitioners who may be involved in an adverse incident.

Accordingly, staff recommended that the exemptions in s. 400.119, F.S., be reenacted and thereby saved from repeal.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 400.119, F.S., to reenact, reorganize, and clarify the exemptions to the public meetings and public records laws to exempt the following:

- Incident reports filed with the risk manager and administrator of a nursing home or ALF,
- Notifications and adverse incident reports filed with AHCA,
- The meetings of an internal risk management and quality assurance committee of a nursing home or ALF, and
- Records of the meetings of an internal risk management and quality assurance committee of a nursing home or ALF.

Records disclosed to a law enforcement agency remain confidential and exempt until criminal charges are filed.

The bill deletes the provision that repeals the exemptions effective October 2, 2006.

**Section 2.** Provides that the bill will take effect October 1, 2006.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

In accordance with a review pursuant to the Open Government Sunset Review Act, this bill amends s. 400.119, F.S., and preserves the public meetings and records exemptions in that section. The bill does not expand the exemptions. The bill complies with the requirements of Art. I, s. 24(a) and (b) of the State Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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