

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7027 PCB GO 06-13 OGSR Long-term Care Facilities  
**SPONSOR(S):** Governmental Operations Committee, Rivera  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 510

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| REFERENCE                                      | ACTION   | ANALYST    | STAFF DIRECTOR |
|--|----------|------------|----------------|
| Orig. Comm.: Governmental Operations Committee | 4 Y, 2 N | Williamson | Williamson     |
| 1) Elder & Long-Term Care Committee            | 7 Y, 0 N | Walsh      | Walsh          |
| 2) State Administration Council                |          |            |                |
| 3)   |          |            |                |
| 4)   |          |            |                |
| 5)   |          |            |                |

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### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2<sup>nd</sup> of the fifth year after enactment.

The bill reenacts the public records and public meetings exemptions regarding incident reports reported by a nursing home or assisted living facility. The exemptions will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

In 2001, the Legislature required nursing homes to implement an internal risk management and quality assurance program to investigate and analyze the frequency and cause of specific types of adverse incidents.<sup>1</sup> The Legislature also authorized assisted living facilities to voluntarily establish a risk management and quality assurance program.<sup>2</sup> Both are required to report adverse incidents to the Agency for Health Care Administration (AHCA).<sup>3</sup>

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

- An event over which facility personnel could exercise control and that is associated in whole or in part with the facility’s intervention, and that results in:
  - Death;
  - Brain or spinal injury;
  - Permanent disfigurement;
  - Fracture or dislocation of bones or joints;
  - A limitation of neurological, physical, or sensory function;<sup>4</sup>
  - A condition that required medical attention to which the resident has not given his or her informed consent; or
  - Any condition that requires the transfer of the resident to a unit providing a more acute level of care due 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.;<sup>5</sup>
- Resident elopement; or
- Events reported to law enforcement.<sup>6</sup>

Current law provides a public records and public meetings exemption with regards to incident reports.<sup>7</sup> Incident reports filed with a facility’s risk manager and administrator, notifications of the occurrence of an adverse incident, and adverse incident reports are confidential and exempt<sup>8</sup> from public records

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<sup>1</sup> 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 the Agency for Health Care Administration (AHCA), and resident grievances; and develop plans of action to correct and quickly respond to identified quality deficiencies. The nursing home administrator is responsible for the program. Subsections (1) and (2) of section 400.147, F.S.

<sup>2</sup> The purpose of the program is to assess resident care practices, facility incident reports, deficiencies cited by AHCA, adverse incident reports, and resident grievances. Section 400.423(1), F.S.

<sup>3</sup> Sections 400.147(7), 400.147(8), 400.423(3), and 400.423(4), F.S.

<sup>4</sup> This provision is not included in the definition of adverse incident for purposes of assisted living facility reporting.

<sup>5</sup> This provision is not included in the definition of adverse incident for purposes of assisted living facility reporting.

<sup>6</sup> Sections 400.147(5) and 400.423(2), F.S.

<sup>7</sup> Section 400.119, F.S.

<sup>8</sup> 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

requirements. Confidential and exempt records are available to a regulatory board for purposes of disciplinary action<sup>9</sup> and to a law enforcement agency if criminal activity is suspected.<sup>10</sup>

Meetings of an internal risk management and quality assurance committee of a nursing home or assisted living facility are exempt from public meetings requirements.<sup>11</sup> Records of the exempt meetings are confidential and exempt from public records requirements.<sup>12</sup>

Pursuant to the Open Government Sunset Review Act,<sup>13</sup> the exemptions will repeal on October 2, 2006, unless reenacted by the Legislature.

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public records and public meetings exemptions. It makes editorial changes and reorganizes the section.

#### **C. SECTION DIRECTORY:**

Section 1 amends s. 400.119, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an effective date of October 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate local expenditures.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See FISCAL COMMENTS.

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circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>9</sup> Confidential and exempt records obtained by a regulatory board are not available to the public as part of the record of investigation and prosecution in a disciplinary proceeding; however, upon request, such records are available to the health care professional against whom probable cause has been found. Section 400.119(2), F.S.

<sup>10</sup> The law enforcement agency must maintain the confidential and exempt status of the records until criminal charges are filed. Section 400.119(3), F.S.

<sup>11</sup> Section 400.119(4), F.S.

<sup>12</sup> Section 400.119(1), F.S.

<sup>13</sup> Section 119.15, F.S.

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D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state expenditures, as well as nursing homes and assisted living facilities. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government, as well as nursing homes and assisted living facilities, may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act**

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

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

None.