

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 943                      Public Records  
**SPONSOR(S):** Harrell  
**TIED BILLS:** HB 913                      **IDEN./SIM. BILLS:** CS/SB 176

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

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### SUMMARY ANALYSIS

HB 943 creates s. 893.056, F.S., to provide a public records exemption for certain information in the proposed electronic monitoring system of Schedule II, III, and IV prescription drugs. The exempt information is:

- Personal identifying information of a patient;
- A practitioner as defined in s. 893.02, F.S.; and
- A pharmacist as defined in s. 465.003, F.S.

The bill provides that the exempt records may be disclosed to certain entities, and the bill establishes criminal provisions for violating the bill.

**HB 943 is linked to HB 913. HB 913 currently does not create an electronic prescription monitoring system. The bill sponsor has indicated an amendment to HB 913 will be filed to create an electronic monitoring system for prescription of Schedule II, III, and IV substances.**

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

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 of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

HB 943 creates s. 893.056, F.S., to provide a public records exemption for certain information in the proposed electronic monitoring system of Schedule II-IV prescription drugs. The exempt information in the proposed electronic monitoring system is:

- Personal identifying information of a patient;
- A practitioner as defined in s. 893.02, F.S.; and
- A pharmacist as defined in s. 465.003, F.S.

The bill provides that the exempt records may be disclosed to:

- The Agency for Health Care Administration when it has initiated a review of specific identifiers of Medicaid fraud and abuse;
- A state or federal criminal justice agency that enforces laws relating to drugs and that is engaged in a specific investigation involving a violation of law;
- A practitioner defined under chapter 893, F.S., and an employee of the practitioner, who requests such information and certifies that it is necessary to provide medical treatment to a current patient, subject to the patient's written consent;
- A pharmacist licensed in this state, or a pharmacy intern or pharmacy technician designated by the pharmacist, who requests information and certifies that it is to be used to dispense controlled substances to a current patient; and
- The patient who is identified in the record, upon a written request, for the purpose of verifying that information.

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, s. 119.15, F.S. It also provides a statement of public necessity and provides an effective date.

The effective date of the bill is July 1, 2006, and is linked to the passage of HB 913.

#### HB 913

HB 913 requires the development and adoption of counterfeit-resistant prescription blanks to be used voluntarily by physicians to prescribe Schedule II, Schedule III, or Schedule IV controlled substances. The bill prohibits the sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks. The bill provides additional requirements for the dispensing of a controlled substance. Most significantly, the bill:

- Provides that any controlled substance listed in Schedule III or Schedule IV may be dispensed by a pharmacist upon oral prescription if, before filling the prescription, the pharmacist reduces it to writing or records the prescription electronically. Such prescriptions must contain the date of the oral authorization.
- Provides that a pharmacist may not dispense more than a 30-day supply of a Schedule III controlled substance based upon an oral prescription.

- Limits the dispensing of Schedule II drugs in an emergency situation based upon an oral prescription to a 72-hour supply.
- Provides that each written prescription prescribed by a practitioner in Florida for a controlled substance listed in Schedule II, Schedule III, or Schedule IV must include both a written and numerical notation of the quantity and a notation of the date with the abbreviated month written out on the face of the prescription.

Further, the bill provides that if a person dies of an apparent overdose, a law enforcement agency must prepare a report identifying each prescribed controlled substance listed in Schedule II, III or IV that is found on or near the deceased or among the deceased's possessions. The report must identify the person who prescribed the controlled substance, if known or ascertainable. The law enforcement agency must submit a copy of the report to the medical examiner. A medical examiner who is preparing a report pursuant to s. 406.11, F.S. must include in the report information identifying each prescribed controlled substance listed in Schedule II, III or IV that was found in, on or near the deceased or among the deceased possessions.

**HB 941 is linked to HB 913. HB 913 currently does not create an electronic prescription monitoring system. The bill sponsor has indicated an amendment will be filed to create an electronic monitoring system for prescription of Schedule II, III, and IV substances.**

C. SECTION DIRECTORY:

**Section 1.** – Creates s. 893.056, F.S., to create a public records exemption for the electronic monitoring system for prescription of controlled substances listed in Schedules II-IV.

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

**Section 3.** – Provides an effective date of July 1, 2006 contingent on passage of HB 943.

## 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.

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

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