

A bill to be entitled

An act relating to public records; creating s. 893.056, F.S.; exempting from public-records requirements information and records reported to the Department of Health under the electronic-monitoring system for prescription of controlled substances listed in Schedules II-IV; authorizing certain persons and entities access to personal identifying information of a patient; providing guidelines for the use of such information and penalties for violations; providing for future legislative review and repeal; providing a finding of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 893.056, Florida Statutes, is created to read:

893.056 Public-records exemption for the electronic-monitoring system for prescription of controlled substances listed in Schedules II-IV.--

(1) Personal identifying information of a patient, a practitioner as defined in s. 893.02, or a pharmacist as defined in s. 465.003, which is contained in records held by the Department of Health under s. 893.055, the electronic-monitoring system for prescription of controlled substances, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) The Department of Health shall disclose such

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29 confidential and exempt information to:

30 (a) The Agency for Health Care Administration when it has
31 initiated a review of specific identifiers of Medicaid fraud and
32 abuse.

33 (b) A criminal justice agency as defined in s. 119.011,
34 which enforces the laws of this state or the United States
35 relating to controlled substances and which has initiated an
36 active investigation involving a specific violation of law.

37 (c) A practitioner as defined in s. 893.02, or an employee
38 of the practitioner who is acting on behalf of and at the
39 direction of the practitioner, who requests such information and
40 certifies that the information is necessary to provide medical
41 treatment to a current patient in accordance with s. 893.05,
42 subject to that patient's written consent.

43 (d) A pharmacist as defined in s. 465.003, or a pharmacy
44 intern or pharmacy technician who is acting on behalf of and at
45 the direction of the pharmacist, who requests such information
46 and certifies that the requested information will be used to
47 dispense controlled substances to a current patient in
48 accordance with s. 893.04.

49 (e) The patient who is identified in the record upon a
50 written request for the purpose of verifying that information.

51 (3) Any agency that obtains such confidential and exempt
52 information pursuant to this section must maintain the
53 confidential and exempt status of that information; however, the
54 Agency for Health Care Administration or a criminal justice
55 agency with lawful access to such information may disclose
56 confidential and exempt information received from the Department

57 of Health to a criminal justice agency as part of an active
58 investigation of a specific violation of law.

59 (4) Any person who willfully and knowingly violates this
60 section commits a felony of the third degree, punishable as
61 provided in s. 775.082 or s. 775.083.

62 (5) This section is subject to the Open Government Sunset
63 Review Act of 1995 in accordance with s. 119.15, and shall stand
64 repealed on October 2, 2011, unless reviewed and saved from
65 repeal through reenactment by the Legislature.

66 Section 2. The Legislature finds that it is a public
67 necessity that personal identifying information of a patient, a
68 practitioner as defined in s. 893.02, Florida Statutes, or a
69 pharmacist as defined in s. 465.003, Florida Statutes, contained
70 in records that are reported to the Department of Health under
71 s. 893.055, Florida Statutes, the electronic-monitoring system
72 for prescription of controlled substances, be made confidential
73 and exempt. Information concerning the prescriptions that a
74 patient has been prescribed is a private, personal matter
75 between the patient, the practitioner, and the pharmacist.
76 Nevertheless, reporting of prescriptions on a timely and
77 accurate basis by practitioners and pharmacists will ensure the
78 ability of the state to review and provide oversight of
79 prescribing and dispensing practices. Further, the reporting of
80 this information will facilitate investigations and prosecutions
81 of violations of state drug laws by patients, practitioners, or
82 pharmacists, thereby increasing compliance with those laws. If,
83 in the process, however, the information that would identify a
84 patient is not made confidential and exempt, any person could

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85 inspect and copy the record and be aware of the prescriptions
86 that a patient has been prescribed. The availability of such
87 information to the public would result in the invasion of the
88 patient's privacy. If the identity of the patient could be
89 correlated with his or her prescriptions, it would be possible
90 for the public to become aware of the diseases or other medical
91 concerns that a patient is being treated for by his or her
92 physician. This knowledge could be used to embarrass or to
93 humiliate a patient or to discriminate against him or her.
94 Requiring the reporting of prescribing information, while
95 protecting a patient's personal identifying information, will
96 facilitate efforts to maintain compliance with the state's drug
97 laws and will facilitate the sharing of information between
98 health care practitioners and pharmacists, while maintaining and
99 ensuring patient privacy. Additionally, exempting personal
100 identifying information of doctors and pharmacists will ensure
101 that an individual will not be able to "doctor-shop," that is to
102 determine which doctors prescribe the highest amount of a
103 particular type of drug and to seek those doctors out in order
104 to increase the likelihood of obtaining a particular prescribed
105 substance. Further, protecting personal identifying information
106 of pharmacists ensures that an individual will not be able to
107 identify which pharmacists dispense the largest amount of a
108 particular substance and target that pharmacy for robbery or
109 burglary. Thus, the Legislature finds that personal identifying
110 information of a patient, a practitioner as defined in s.
111 893.02, Florida Statutes, or a pharmacist as defined in s.
112 465.003, Florida Statutes, contained in records reported under

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113 s. 893.055, Florida Statutes, must be confidential and exempt
114 from disclosure.

115 Section 3. This act shall take effect July 1, 2006, if
116 House Bill 913, or similar legislation establishing an
117 electronic system to monitor the prescribing of controlled
118 substances, is adopted in the same legislative session or an
119 extension thereof and becomes law.