

By Senator Saunders

37-61-07

1 A bill to be entitled
2 An act relating to public records; creating s.
3 893.056, F.S.; exempting from public-records
4 requirements information and records reported
5 to the Department of Health under the
6 electronic monitoring system for prescription
7 of controlled substances listed in Schedules
8 II-IV; authorizing certain persons and entities
9 access to patient-identifying information;
10 providing guidelines for the use of such
11 information and penalties for violations;
12 providing for future legislative review and
13 repeal; providing a finding of public
14 necessity; providing a contingent effective
15 date.

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

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

21 893.056 Public-records exemption for the
22 electronic-monitoring system for prescription of controlled
23 substances listed in Schedule II, Schedule III, or Schedule
24 IV.--

25 (1) Identifying information, including, but not
26 limited to, the name, address, phone number, insurance plan
27 number, social security number or government-issued
28 identification number, provider number, Drug Enforcement
29 Administration number, or any other unique identifying number
30 of a patient, patient's agent, health care practitioner,
31 pharmacist, pharmacist's agent, or pharmacy which is contained

1 in records held by the Department of Health or any other
2 agency as defined in s. 119.011(2) under s. 893.055, the
3 electronic-monitoring system for prescription of controlled
4 substances, is confidential and exempt from s. 119.07(1) and
5 s. 24(a), Art. I of the State Constitution.

6 (2) The Department of Health shall disclose such
7 confidential and exempt information to:

8 (a) The Agency for Health Care Administration when it
9 has initiated a review of specific identifiers of Medicaid
10 fraud and abuse.

11 (b) A criminal justice agency, as defined in s.
12 119.011, which enforces the laws of this state or the United
13 States relating to controlled substances and which has
14 initiated an active investigation involving a specific
15 violation of law.

16 (c) A practitioner as defined in s. 893.02, or an
17 employee of the practitioner who is acting on behalf of and at
18 the direction of the practitioner, who requests such
19 information and certifies that the information is necessary to
20 provide medical treatment to a current patient in accordance
21 with s. 893.05.

22 (d) A pharmacist as defined in s. 465.003, or a
23 pharmacy intern or pharmacy technician who is acting on behalf
24 of and at the direction of the pharmacist, who requests such
25 information and certifies that the requested information will
26 be used to dispense controlled substances to a current patient
27 in accordance with s. 893.04.

28 (e) A patient who is identified in the record upon a
29 written request for the purpose of verifying that information.

30 (3) Any agency that obtains such confidential and
31 exempt information pursuant to this section must maintain the

1 confidential and exempt status of that information; however,
2 the Agency for Health Care Administration or a criminal
3 justice agency that has lawful access to such information may
4 disclose confidential and exempt information received from the
5 Department of Health to a criminal justice agency as part of
6 an active investigation of a specific violation of law.

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

10 (5) This section is subject to the Open Government
11 Sunset Review Act in accordance with s. 119.15, and shall
12 stand repealed on October 2, 2012, unless reviewed and saved
13 from repeal through reenactment by the Legislature.

14 Section 2. The Legislature finds that it is a public
15 necessity that personal identifying information of a patient,
16 a practitioner as defined in s. 893.02, Florida Statutes, or a
17 pharmacist as defined in s. 465.003, Florida Statutes,
18 contained in records that are reported to the Department of
19 Health under s. 893.055, Florida Statutes, the
20 electronic-monitoring system for prescription of controlled
21 substances, be made confidential and exempt from disclosure.
22 Information concerning the prescriptions that a patient has
23 been prescribed is a private, personal matter between the
24 patient, the practitioner, and the pharmacist. Nevertheless,
25 reporting of prescriptions on a timely and accurate basis by
26 practitioners and pharmacists will ensure the ability of the
27 state to review and provide oversight of prescribing and
28 dispensing practices. Further, the reporting of this
29 information will facilitate investigations and prosecutions of
30 violations of state drug laws by patients, practitioners, or
31 pharmacists, thereby increasing compliance with those laws.

1 However, if in the process the information that would identify
2 a patient is not made confidential and exempt from disclosure,
3 any person could inspect and copy the record and be aware of
4 the patient's prescriptions. The availability of such
5 information to the public would result in the invasion of the
6 patient's privacy. If the identity of the patient could be
7 correlated with his or her prescriptions, it would be possible
8 for the public to become aware of the diseases or other
9 medical concerns for which a patient is being treated by his
10 or her physician. This knowledge could be used to embarrass or
11 to humiliate a patient or to discriminate against him or her.
12 Requiring the reporting of prescribing information, while
13 protecting a patient's personal identifying information, will
14 facilitate efforts to maintain compliance with the state's
15 drug laws and will facilitate the sharing of information
16 between health care practitioners and pharmacists, while
17 maintaining and ensuring patient privacy. Additionally,
18 exempting from disclosure the personal identifying information
19 of practitioners will ensure that an individual will not be
20 able to "doctor-shop," that is to determine which
21 practitioners prescribe the highest amount of a particular
22 type of drug and to seek those practitioners out in order to
23 increase the likelihood of obtaining a particular prescribed
24 substance. Further, protecting personal identifying
25 information of pharmacists ensures that an individual will not
26 be able to identify which pharmacists dispense the largest
27 amount of a particular substance and target that pharmacy for
28 robbery or burglary. Thus, the Legislature finds that personal
29 identifying information of a patient, a practitioner as
30 defined in s. 893.02, Florida Statutes, or a pharmacist as
31 defined in s. 465.003, Florida Statutes, contained in records

1 reported under s. 893.055, Florida Statutes, must be
2 confidential and exempt from disclosure.

3 Section 3. This act shall take effect July 1, 2007, if
4 Senate Bill ____, or similar legislation establishing an
5 electronic system to monitor the prescribing of controlled
6 substances, is adopted in the same legislative session or an
7 extension thereof and becomes law.

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SENATE SUMMARY

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Exempts 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. Authorizes certain persons and entities access to patient-identifying information. Provides guidelines for the use of such information and penalties for violations. Provides for future legislative review and repeal. Provides a finding of public necessity.

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