

By the Committee on Health Regulation; and Senator Fasano

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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 to the
5 Department of Health under the prescription drug
6 validation program for the tracking of prescriptions
7 of controlled substances listed in Schedules II-IV;
8 authorizing certain persons and entities access to
9 patient-identifying information; providing guidelines
10 for the use of such information and penalties for
11 violations; providing for future legislative review
12 and repeal of the exemption under the Open Government
13 Sunset Review Act; providing a finding of public
14 necessity; providing a contingent effective date.

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

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

20 893.056 Public-records exemption for the prescription drug
21 validation program for the tracking of prescriptions of
22 controlled substances listed in Schedule II, Schedule III, or
23 Schedule IV in s. 893.03.—

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

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30 or pharmacy which is contained in records held by the Department
31 of Health or any other agency as defined in s. 119.011(2) under
32 s. 893.055, the prescription drug validation program for the
33 tracking of prescriptions of controlled substances, is
34 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
35 of the State Constitution.

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

38 (a) The Agency for Health Care Administration when it has
39 initiated a review of specific identifiers of Medicaid fraud and
40 abuse.

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

45 (c) A practitioner as defined in s. 893.02, or an employee
46 of the practitioner who is acting on behalf of and at the
47 direction of the practitioner, who requests such information and
48 certifies that the information is necessary to provide medical
49 treatment to a current patient in accordance with s. 893.05.

50 (d) A pharmacist as defined in s. 465.003, or a pharmacy
51 intern or pharmacy technician who is acting on behalf of and at
52 the direction of the pharmacist, who requests such information
53 and certifies that the requested information will be used to
54 dispense controlled substances to a current patient in
55 accordance with s. 893.04.

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

58 (f) A judge or a probation or parole officer administering

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59 a drug or the probation program of a criminal defendant arising
60 out of a violation of this chapter or of a criminal defendant
61 who is documented by the court as a substance abuser and who is
62 eligible to participate in a court-ordered drug diversion,
63 treatment, or probation program.

64 (g) A duly appointed medical examiner, or an investigator
65 of the medical examiner who is acting on behalf of or at the
66 direction of the medical examiner, who requests such information
67 and certifies that the information is necessary in an active
68 death investigation as provided in s. 406.11 which involves a
69 suspected drug-related death.

70 (3) Any agency that obtains such confidential and exempt
71 information pursuant to this section must maintain the
72 confidential and exempt status of that information; however, the
73 Department of Health or a criminal justice agency that has
74 lawful access to such information may disclose confidential and
75 exempt information received from the Department of Health to a
76 criminal justice agency as part of an active investigation of a
77 specific violation of law.

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

81 (5) This section is subject to the Open Government Sunset
82 Review Act in accordance with s. 119.15, and shall stand
83 repealed on October 2, 2014, unless reviewed and saved from
84 repeal through reenactment by the Legislature.

85 Section 2. The Legislature finds that it is a public
86 necessity that personal identifying information of a patient, a
87 practitioner as defined in s. 893.02, Florida Statutes, or a

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88 pharmacist as defined in s. 465.003, Florida Statutes, contained
89 in records that are reported to the Department of Health under
90 s. 893.055, Florida Statutes, the prescription drug validation
91 program for the tracking of prescriptions of controlled
92 substances, be made confidential and exempt from disclosure.
93 Information concerning the prescriptions that a patient has been
94 prescribed is a private, personal matter between the patient,
95 the practitioner, and the pharmacist. Nevertheless, reporting of
96 prescriptions on a timely and accurate basis by practitioners
97 and pharmacists will ensure the ability of the state to review
98 and provide oversight of prescribing and dispensing practices.
99 Further, the reporting of this information will facilitate
100 investigations and prosecutions of violations of state drug laws
101 by patients, practitioners, or pharmacists, thereby increasing
102 compliance with those laws. However, if in the process the
103 information that would identify a patient is not made
104 confidential and exempt from disclosure, any person could
105 inspect and copy the record and be aware of the patient's
106 prescriptions. The availability of such information to the
107 public would result in the invasion of the patient's privacy. If
108 the identity of the patient could be correlated with his or her
109 prescriptions, it would be possible for the public to become
110 aware of the diseases or other medical concerns for which a
111 patient is being treated by his or her physician. This knowledge
112 could be used to embarrass or to humiliate a patient or to
113 discriminate against him or her. Requiring the reporting of
114 prescribing information, while protecting a patient's personal
115 identifying information, will facilitate efforts to maintain
116 compliance with the state's drug laws and will facilitate the

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117 sharing of information between health care practitioners and
118 pharmacists, while maintaining and ensuring patient privacy.
119 Additionally, exempting from disclosure the personal identifying
120 information of practitioners will ensure that an individual will
121 not be able to identify which practitioners prescribe the
122 highest amount of a particular type of drug and to seek those
123 practitioners out in order to increase the likelihood of
124 obtaining a particular prescribed substance. Further, protecting
125 personal identifying information of pharmacists ensures that an
126 individual will not be able to identify which pharmacists or
127 pharmacies dispense the largest amount of a particular substance
128 and identify that pharmacy for robbery or burglary. Thus, the
129 Legislature finds that the personal identifying information of a
130 patient, a practitioner as defined in s. 893.02, Florida
131 Statutes, or a pharmacist as defined in s. 465.003, Florida
132 Statutes, which is contained in records reported under s.
133 893.055, Florida Statutes, must be confidential and exempt from
134 disclosure.

135 Section 3. This act shall take effect July 1, 2009, if CS
136 for SB 462, or similar legislation establishing an electronic
137 system to monitor the prescribing of controlled substances, is
138 adopted in the same legislative session or an extension thereof
139 and becomes law.