

By the Committees on Governmental Oversight and Accountability;
and Health Regulation; and Senator Fasano

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1 A bill to be entitled
2 An act relating to public records; creating s.
3 893.0551, F.S.; exempting from public-records
4 requirements for information and records reported to
5 the Department of Health under the electronic
6 prescription drug monitoring program for the
7 monitoring and dispensing of prescriptions of
8 controlled substances listed in Schedules II-IV;
9 authorizing certain persons and entities access to
10 information identifying patients, practitioners, or
11 pharmacists; providing guidelines for the use of such
12 information and penalties for violations; providing
13 for future legislative review and repeal of the
14 exemption under the Open Government Sunset Review Act;
15 providing a finding of public necessity; providing a
16 contingent effective date.

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

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20 Section 1. Section 893.0551, Florida Statutes, is created
21 to read:

22 893.0551 Public-records exemption for the prescription drug
23 monitoring program.—

24 (1) Identifying information, including, but not limited to,
25 the name, address, telephone number, insurance plan number,
26 government-issued identification number, provider number, Drug
27 Enforcement Administration number, or any other unique
28 identifying number of a patient, patient's agent, health care
29 practitioner or practitioner as defined in s. 893.055, or an

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30 employee of the practitioner who is acting on behalf of and at
31 the direction of the practitioner, a pharmacist, or a pharmacy,
32 which is contained in records held by the Department of Health
33 under s. 893.055, is confidential and exempt from s. 119.07(1)
34 and s. 24(a), Art. I of the State Constitution.

35 (2) The Department of Health shall disclose such
36 confidential and exempt information to the following entities
37 after verifying that entity's request for the information is
38 legitimate:

39 (a) The Attorney General or his or her designee when
40 working on Medicaid fraud cases involving prescription drugs or
41 when the Attorney General has initiated a review of specific
42 identifiers of Medicaid fraud regarding prescription drugs. The
43 Attorney General or his or her designee may request information
44 from the Department of Health but may not have direct access to
45 its database.

46 (b) Any relevant health care regulatory board within the
47 Department of Health, as defined in s. 893.055, which is
48 responsible for the licensure, regulation, or discipline of a
49 practitioner, pharmacist, or other person who is authorized to
50 prescribe, administer, or dispense controlled substances and is
51 involved in a specific controlled substances investigation for
52 prescription drugs involving a designated person. Such health
53 care regulatory boards may request information from the
54 department but may not have direct access to its database.

55 (c) A law enforcement agency as described in s.
56 119.011(4)(a), specifically limited to the Department of Law
57 Enforcement, sheriffs in this state, police departments in this
58 state, and federal law enforcement agencies that enforce the

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59 laws of this state or the United States relating to controlled
60 substances and that have initiated an ongoing and active
61 investigation, as defined in ss. 119.011 and 893.07, involving a
62 specific violation of law regarding prescription drug abuse or
63 diversion of prescribed controlled substances. Such agencies may
64 request information from the department but may not have direct
65 access to its database. Confidential and exempt information may
66 not be disclosed to a civil court or in response to any other
67 noncriminal justice-related or nonjuvenile justice-related
68 request, even if by court order.

69 (d) A health care practitioner who certifies that the
70 information is necessary to provide medical treatment to a
71 current patient in accordance with ss. 893.05 and 893.055.

72 (e) A pharmacist, as defined in s. 465.003, who certifies
73 that the requested information will be used to dispense
74 controlled substances to a current patient in accordance with
75 ss. 893.04 and 893.055.

76 (f) A patient or the legal guardian or designated health
77 care surrogate for an incapacitated patient, if applicable,
78 making a request as provided in s. 893.055(7)(c).

79 (g) The patient's pharmacy, prescriber, or dispenser, as
80 defined in s. 893.055, who certifies that the information is
81 necessary to provide medical treatment to his or her current
82 patient in accordance with s. 893.055.

83 (h) The program manager of the electronic prescription drug
84 monitoring program, the program and support staff, and
85 individuals designated by the program manager as necessary to
86 process validated requests for information or to perform
87 database administrative tasks necessary to support the

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88 monitoring program.

89 (3) Any agency or person who obtains such confidential and
90 exempt information pursuant to this section must maintain the
91 confidential and exempt status of that information. However, a
92 law enforcement agency as provided in paragraph (2)(c) which has
93 lawful access to such information may disclose confidential and
94 exempt information received from the department to a criminal
95 justice agency, as defined in s. 119.011, as part of an
96 investigation that is active, as defined in ss. 119.011 and
97 893.07, of a specific violation of a prescription drug abuse or
98 prescription drug diversion law as it relates to controlled
99 substances. Such confidential and exempt information may not be
100 disclosed to a civil court or pursuant to a noncriminal justice-
101 related or nonjuvenile justice-related request, even if by court
102 order.

103 (4) Any person who willfully and knowingly violates this
104 section commits a felony of the third degree, punishable as
105 provided in s. 775.082, s. 775.083, or s. 775.084.

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

110 Section 2. The Legislature finds that it is a public
111 necessity that personal identifying information of a patient, a
112 practitioner as defined in ss. 893.02 and 893.055, Florida
113 Statutes, or a pharmacist as defined in s. 465.003, Florida
114 Statutes, contained in records that are reported to the
115 Department of Health under s. 893.055, Florida Statutes, the
116 prescription drug monitoring program for monitoring the

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117 prescribing and dispensing of controlled substances, be made
118 confidential and exempt from disclosure. Information concerning
119 the prescriptions that a patient has been prescribed is a
120 private, personal matter between the patient, the practitioner,
121 and the pharmacist. Nevertheless, reporting of prescriptions on
122 a timely and accurate basis by dispensing practitioners and
123 pharmacists will ensure the ability of the state to review and
124 provide oversight of prescribing and dispensing practices.
125 Further, the reporting of this information will facilitate
126 investigations and prosecutions of violations of state drug laws
127 by patients, practitioners, or pharmacists, thereby increasing
128 compliance with those laws. However, if in the process the
129 information that would identify a patient is not made
130 confidential and exempt from disclosure, any person could
131 inspect and copy the record and be aware of the patient's
132 prescriptions. The availability of such information to the
133 public would result in the invasion of the patient's privacy. If
134 the identity of the patient could be correlated with his or her
135 prescriptions, it would be possible for the public to become
136 aware of the diseases or other medical concerns for which a
137 patient is being treated by his or her physician. This knowledge
138 could be used to embarrass or to humiliate a patient or to
139 discriminate against him or her. Requiring the reporting of
140 prescribing information, while protecting a patient's personal
141 identifying information, will facilitate efforts to maintain
142 compliance with the state's drug laws and will facilitate the
143 sharing of information between health care practitioners and
144 pharmacists, while maintaining and ensuring patient privacy.
145 Additionally, exempting from disclosure the personal identifying

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146 information of practitioners will ensure that an individual will
147 not be able to identify which practitioners prescribe the
148 highest amount of a particular type of drug and to seek those
149 practitioners out in order to increase the likelihood of
150 obtaining a particular prescribed substance. Further, protecting
151 personal identifying information of pharmacists ensures that an
152 individual will not be able to identify which pharmacists,
153 pharmacies, or dispensing health care practitioners dispense the
154 largest amount of a particular substance and identify that
155 pharmacy or dispensing health care practitioner for robbery or
156 burglary. Thus, the Legislature finds that the personal
157 identifying information of a patient, a practitioner as defined
158 in ss. 893.02 and 893.055, Florida Statutes, or a pharmacist as
159 defined in s. 465.003, Florida Statutes, which is contained in
160 records reported under s. 893.055, Florida Statutes, must be
161 confidential and exempt from disclosure.

162 Section 3. This act shall take effect July 1, 2009, if CS
163 for CS for CS for SB 462, or similar legislation establishing an
164 electronic system to monitor the prescribing and dispensing of
165 controlled substances, is adopted in the same legislative
166 session or an extension thereof and becomes law.