

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 937 Pub. Rec./Controlled Substance Prescriptions/AHCA  
**SPONSOR(S):** Full Appropriations Council on General Government & Health Care; Llorente, Kelly, Skidmore and others  
**TIED BILLS:** CS/HB 897 **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee	7 Y, 0 N	Calamas	Calamas
2)	Governmental Affairs Policy Committee	(W/D)		
3)	Health & Family Services Policy Council	(W/D)		
4)	Full Appropriations Council on General Government & Health Care	33 Y, 0 N, As CS	Massengale	Leznoff
5)				

### SUMMARY ANALYSIS

The bill creates section 893.0551, Florida Statutes, and establishes a public records exemption for certain information contained in the prescription drug monitoring database required by Council Substitute for House Bill 897. The exemption provides that personal identifying information concerning a patient, a practitioner, a pharmacist or a pharmacy contained in records held by any agency having access to or operating the database is confidential and exempt from disclosure. The bill provides a specific statement of public necessity for the public records exemptions.

The bill requires the Department of Health to make certain disclosures of the confidential and exempt records to the Attorney General, the department's relevant health care regulatory boards, health care practitioners, patients and law enforcement entities for certain purposes. The bill requires department to verify and respond to requests for data.

The bill imposes criminal penalties. The bill makes willful and knowing improper disclosures of database information a third degree felony, punishable as provided in sections 775.082, 775.083, or 775.084, Florida Statutes.

The bill appears to have no fiscal impact on local government. The fiscal impact to state government is insignificant according to the February 25, 2009, Criminal Justice Impact Conference.

The bill provides for an effective date of July 1, 2009, if House Bill 897 establishing a prescription drug monitoring program becomes law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Public Records Law**

Article I, section 24(a) of the 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. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a), 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 is further addressed in the Florida Statutes. Section 119.07(1), Florida Statutes, also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act 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.

Article I, section 24(c) of the Florida Constitution provides that bills containing public records exemptions include a specific statement of public necessity. Such a bill must contain only the public records exemption, and requires a two-thirds vote of the members present and voting for passage.

##### **Prescription Drug Monitoring Database**

Council Substitute for House Bill 897 (2009) requires the Department of Health to establish a prescription drug monitoring program to track the dispensing of Schedule II, III and IV controlled

substances in Florida. Under the bill's directives, dispensing health care practitioners would be required to report certain information to the state drug database within 15 days of dispensing those controlled substances. The bill requires the Department of Health to promulgate rules governing what information must be provided, which may include but is not limited to:

- The full name and address of the person for whom the controlled substance is dispensed;
- The full name and address of the prescribing practitioner and the prescriber's federal controlled substance registry number;
- The name of the controlled substance prescribed and the strength, quantity, and directions for the use thereof;
- The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filed; and
- The initials of the pharmacist filling the prescription and the date filled;
- The name and address of the pharmacy from which the controlled substance was dispensed;
- The date on which the prescription for the controlled substance was filled;
- The name of the prescribing practitioner.

The bill would require state collection of personally identifiable information on Floridians receiving prescribed controlled substances.

## **HIPAA**

The 1996 Health Insurance Portability and Accountability Act (HIPAA) required the federal government to issue regulations protecting the privacy of health information. The U.S. Department of Health and Human Services (HHS) issued Standards for Privacy of Individually Identifiable Health Information on December 28, 2000, which took effect on April 14, 2003. The regulations establish a set of national standards for the protection of health information, and apply to health plans, health care clearinghouses and certain health care providers. The regulations permit states to afford greater privacy protections to health information. Exceptions for state law are provided for public health and state regulatory reporting.<sup>1</sup>

### **Effect of Proposed Changes**

The bill creates section 893.0551, Florida Statutes, which establishes a public records exemption for certain information contained in the prescription drug monitoring database required by Council Substitute for House Bill 897. The bill specifies that identification and location information of a patient, practitioner or pharmacist or pharmacy contained in records held by any agency having access to or operating the database is confidential and exempt from disclosure.

In addition to creating the public records exemption and confidentiality status, the bill requires DOH to make certain disclosures of the confidential and exempt records to certain entities for certain purposes, after using a verification process to ensure the legitimacy of that person's request as follows:

- The Attorney General (AG) or his/her designee when working on Medicaid fraud cases involving prescription drugs or when the AG has initiated a review of specific identifiers of Medicaid fraud. The AG may disclose the confidential and exempt information to a criminal justice agency as defined in section 119.011, Florida Statutes, as part of an active investigation that is specific to a violation of prescription drug abuse or prescribed drug diversion law as it relates to controlled substances. The AG's fraud investigators may not have direct access to the database.
- The department's relevant health regulatory board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances and who are involved in a specific investigation

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<sup>1</sup> U.S. Department of Health & Human Services, Health Information Privacy, *available at* <http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html> (last viewed March 21, 2009).

involving a designated person. The boards may request information, but may not have direct access to the database

- A law enforcement agency, defined as the Department of Law Enforcement, a Florida sheriff's office, a Florida police department, or a law enforcement agency of the federal government that enforces law of this state or the United States relating to controlled substances, which has initiated an active investigation involving a specific violation of law. The law enforcement agency may disclose the information received from the department to a criminal justice agency as defined in section 119.011, Florida Statutes. A law enforcement agency may request information from the department, but may not have direct access to the database.
- A practitioner as defined in section 893.055, Florida Statutes, who requests such information and certifies that the information is necessary to provide medical treatment to a current patient in accordance with sections 893.05 and 893.055, Florida Statutes.
- A pharmacist as defined in section 465.003, Florida Statutes, who requests such information and certifies that the requested information will be used to dispense controlled substances to a current patient in accordance with sections 893.04 and 893.055, Florida Statutes.
- A patient or the legal guardian or designated health care surrogate for an incapacitated patient making a request as provided in section 893.055(7)(c)4, Florida Statutes.
- The patient's pharmacy, prescriber or dispenser who certifies that the information is necessary to provide medical treatment to the patient in accordance with section 893.055, Florida Statutes.

In addition to the public records exemption and the authority for certain disclosures, the bill imposes criminal penalties. The bill makes willful and knowing improper disclosures of database information a third degree felony, punishable as provided in sections 775.082, 775.083, or 775.084, Florida Statutes.<sup>2</sup>

Finally, the bill provides a specific statement of public necessity for the public records exemptions.

#### B. SECTION DIRECTORY:

**Section 1.** Creates s. 893.0551, F.S., providing for public records exemptions, providing for disclosures, providing criminal penalties.

**Section 2.** Provides a statement of public necessity pursuant to Article I, section 24(c) of the Florida Constitution.

**Section 3.** Provides an effective date of July 1, 2009, contingent upon the enactment of House Bill 897 or similar legislation.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill makes willful and knowing improper disclosures of database information a third degree felony. The February 25, 2009, Criminal Justice Impact Conference determined that HB 145, similar legislation, had an insignificant fiscal impact.

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<sup>2</sup> These sections provide for a sentence of up to five years of imprisonment (or, for habitual offenders, up to 10 years) and up to \$5,000 in fines,.

**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 an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

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. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The public necessity statement is contained in Section 2 of the bill.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On April 20, 2009, the Full Appropriations Council on General Government & Health Care adopted a strike-all amendment that included the following changes:

- Replaces the Agency for Health Care Administration with the Department of Health as the responsible entity.
- Adds practitioner-identifying and pharmacist-identifying information to exemption from public records requirements.
- Adds the Attorney General (AG) or his/her designee as eligible to receive information from the department when working on Medicaid fraud cases involving prescription drugs or when the AG has initiated a review of specific identifiers of Medicaid fraud regarding prescription drugs.

The bill was reported favorably as a Council Substitute. The analysis reflects the Council Substitute.