

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 937

Pub. Rec./Controlled Substance Prescriptions/AHCA

**SPONSOR(S):** Llorente

**TIED BILLS:** HB 897

**IDEN./SIM. BILLS:**

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Health Care Regulation Policy Committee</u>	<u></u>	<u>Calamas</u>	<u>Calamas</u>
2)	<u>Governmental Affairs Policy Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Health &amp; Family Services Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u>Full Appropriations Council on General Government &amp; Health Care</u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

The bill creates section 893.056, F.S., and establishes a public records exemption for certain information contained in the prescription drug monitoring database required by 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 Agency for Health Care Administration (AHCA) to make certain disclosures of the confidential and exempt records to health care practitioners, patients and law enforcement and judicial entities, for certain purposes. The bill requires AHCA to screen 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 ss. 775.082, 775.083, or 775.084, F.S.

The bill creates a significant negative impact to the Grants and Donations Trust Fund within AHCA to implement the provisions of this bill and HB 897. (See Fiscal Analysis.)

The bill provides for an effective date of July 1, 2009.

## 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, s. 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), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>1</sup> 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**

House Bill 897 (2009) requires the Agency for Health Care Administration to design and implement a prescription drug monitoring system 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 893.056, F.S., which establishes a public records exemption for certain information contained in the prescription drug monitoring database required by House Bill 897. The bill 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.

In addition to creating the public records exemption and confidentiality status, the bill requires AHCA to make certain disclosures of the confidential and exempt records to certain entities for certain purposes, as follows:

- The Department of Health or the 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 involving a designated person;
- A criminal justice agency, as defined in s. 119.011, F.S., which enforces the laws of this state or the United States relating to controlled substances and which has initiated an active investigation involving a specific violation of law;
- A practitioner as defined in s. 893.02, F.S., or an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, who requests such information and certifies that

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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).

the information is necessary to provide medical treatment to a current patient in accordance with 893.05, F. S.;

- A pharmacist as defined in s. 465.003, F.S., or a pharmacy intern or pharmacy technician who is acting on behalf of and at the direction of the pharmacist, who requests such information and certifies that the requested information will be used to dispense controlled substances to a current patient in accordance with s. 893.04, F.S.;
- A patient who is identified in the record upon a written request for the purpose of verifying that information;
- A judge or a probation or parole officer administering a drug or the probation program of a criminal defendant arising out of a violation of chapter 893 or of a criminal defendant who is documented by the court as a substance abuser and who is eligible to participate in a court-ordered drug diversion treatment, or probation program; and
- A duly appointed medical examiner, or an investigator of the medical examiner who is acting on behalf of or at the direction of the medical examiner, who requests such information and certifies that the information is necessary in an active death investigation as provided in s. 406.11, F.S., which involves a suspected drug-related death.

The bill requires AHCA to screen and respond to requests for data, to properly identify individuals and records, and to ascertain authorization in the case of minors or other patients under guardianship. The bill appears to allow release of de-identified or aggregated data. The bill does not provide authority to disclose or use the data for purposes of research or public health.

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 ss. 775.082, 775.083, or 775.084, F.S.<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. 893.056, 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, s. 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:

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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:

<b>FISCAL IMPACT ON AHCA/FUNDS:</b>					<b>Amount Year 1 FY 09-10</b>	<b>Amount Year 2 FY 10-11</b>
<b>Expenditures:</b>						
<b>Salaries</b>						
Administrative Assistant II	0712	1.00	<b>18</b>	32,403	\$41,427	\$41,427
		0.00	<b>0</b>	0	\$0	\$0
		0.00	<b>0</b>	0	\$0	\$0
		0.00	<b>0</b>	0	\$0	\$0
<b>Total Salary and Benefits</b>		1.00	<b>26</b>	51,215	\$65,479	\$65,479

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

House Bill 897, to which this bill is tied, provides that all “costs incurred by the agency” in implementing the bill “shall be through federal, private, or grant funding applied for by the state”.

The bill requires AHCA to screen and respond to requests for data, to properly identify individuals and records, and to ascertain authorization in the case of minors or other patients under guardianship. The costs to the Agency to provide patients information about their records in the controlled substance database may increase over time if requests from the general public increase to ensure that a patient’s records are properly released to the requesting person, correctly identified as the patient, or authorized representative of a patient.

According to AHCA, the directives of HB 897 will require two FTEs at AHCA. Part of one FTE’s work will be dedicated to complying with the directives of HB 937, in Year Two of the database implementation, as follows: In the first year, one FTE administrative assistant II (10% above minimum) would spend 50 percent of work time assisting with requests from physicians, pharmacists, law enforcement agencies and the general public. In the second year, 80 percent of work time would be spent on processing requests for access from law enforcement and the general public, and answering routine questions from physicians and pharmacists.

AHCA estimates that the number of requests for access to records from patients would be 2,000 based on the number of requests from patients received by Florida Medicaid for access to records increased by a factor of ten. It is estimated that the average time to process requests is 1.00 hours. This time includes review of the written request and search for the patient’s records that would be provided under contract. The work hours required to process requests each year would be 2000 work hours (2,000 applications x 1 hour).

**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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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