

1 A bill to be entitled
 2 An act relating to public records; creating s. 893.0551,
 3 F.S.; providing definitions; exempting from public records
 4 requirements information and records reported to the
 5 Department of Health under the electronic prescription
 6 drug monitoring program for monitoring the prescribing and
 7 dispensing of controlled substances listed in Schedules
 8 II-IV; authorizing certain persons and entities access to
 9 patient-identifying, practitioner-identifying, or
 10 pharmacist-identifying information; providing guidelines
 11 for the use of such information and penalties for
 12 violations; providing for future legislative review and
 13 repeal; providing a finding of public necessity; providing
 14 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 893.0551, Florida Statutes, is created
 19 to read:

20 893.0551 Public records exemption for the electronic
 21 prescription drug monitoring program.--

22 (1) For purposes of this section, the term:

23 (a) "Active investigation" has the same meaning as
 24 provided in s. 893.055.

25 (b) "Dispenser" has the same meaning as provided in s.
 26 893.055.

27 (c) "Health care practitioner" or "practitioner" has the
 28 same meaning as provided in s. 893.055.

29 (d) "Health care regulatory board" has the same meaning as
30 provided in s. 893.055.

31 (e) "Law enforcement agency" has the same meaning as
32 provided in s. 893.055.

33 (f) "Pharmacist" means any person licensed under chapter
34 465 to practice the profession of pharmacy.

35 (g) "Pharmacy" has the same meaning as provided in s.
36 893.055.

37 (h) "Prescriber" has the same meaning as provided in s.
38 893.055.

39 (2) The following information of a patient or patient's
40 agent, a health care practitioner, a dispenser, an employee of
41 the practitioner who is acting on behalf of and at the direction
42 of the practitioner, a pharmacist, or a pharmacy that is
43 contained in records held by the department under s. 893.055 is
44 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
45 of the State Constitution:

46 (a) Name.

47 (b) Address.

48 (c) Telephone number.

49 (d) Insurance plan number.

50 (e) Government-issued identification number.

51 (f) Provider number.

52 (g) Drug Enforcement Administration number.

53 (h) Any other unique identifying information or number.

54 (3) The department shall disclose such confidential and
55 exempt information to the following entities after using a
56 verification process to ensure the legitimacy of that person's

57 or entity's request for the information:

58 (a) The Attorney General and his or her designee when
59 working on Medicaid fraud cases involving prescription drugs or
60 when the Attorney General has initiated a review of specific
61 identifiers of Medicaid fraud regarding prescription drugs. The
62 Attorney General or his or her designee may disclose the
63 confidential and exempt information received from the department
64 to a criminal justice agency as defined in s. 119.011 as part of
65 an active investigation that is specific to a violation of
66 prescription drug abuse or prescription drug diversion law as it
67 relates to controlled substances. The Attorney General's
68 Medicaid fraud investigators may not have direct access to the
69 department's database.

70 (b) The department's relevant health care regulatory
71 boards responsible for the licensure, regulation, or discipline
72 of a practitioner, pharmacist, or other person who is authorized
73 to prescribe, administer, or dispense controlled substances and
74 who is involved in a specific controlled substances
75 investigation for prescription drugs involving a designated
76 person. The health care regulatory boards may request
77 information from the department but may not have direct access
78 to its database. The health care regulatory boards may provide
79 such information to a law enforcement agency pursuant to ss.
80 456.066 and 456.073.

81 (c) A law enforcement agency that has initiated an active
82 investigation involving a specific violation of law regarding
83 prescription drug abuse or diversion of prescribed controlled
84 substances. The law enforcement agency may disclose the

85 confidential and exempt information received from the department
 86 to a criminal justice agency as defined in s. 119.011 as part of
 87 an active investigation that is specific to a violation of
 88 prescription drug abuse or prescription drug diversion law as it
 89 relates to controlled substances. A law enforcement agency may
 90 request information from the department but may not have direct
 91 access to its database.

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

95 (e) A pharmacist who certifies that the requested
 96 information will be used to dispense controlled substances to a
 97 current patient in accordance with ss. 893.04 and 893.055.

98 (f) A patient or the legal guardian or designated health
 99 care surrogate for an incapacitated patient, if applicable,
 100 making a request as provided in s. 893.055(7)(c)4.

101 (g) The patient's pharmacy, prescriber, or dispenser who
 102 certifies that the information is necessary to provide medical
 103 treatment to his or her current patient in accordance with s.
 104 893.055.

105 (4) Any agency or person who obtains such confidential and
 106 exempt information pursuant to this section must maintain the
 107 confidential and exempt status of that information.

108 (5) Any person who willfully and knowingly violates this
 109 section commits a felony of the third degree, punishable as
 110 provided in s. 775.082, s. 775.083, or s. 775.084.

111 (6) This section is subject to the Open Government Sunset
 112 Review Act in accordance with s. 119.15 and shall stand repealed

113 on October 2, 2014, unless reviewed and saved from repeal
114 through reenactment by the Legislature.

115 Section 2. The Legislature finds that it is a public
116 necessity that certain identification and location information
117 of a patient or patient's agent; a health care practitioner as
118 defined in s. 893.055, Florida Statutes; a dispenser as defined
119 in s. 893.055, Florida Statutes; an employee of the practitioner
120 who is acting on behalf of and at the direction of the
121 practitioner; a pharmacist; or a pharmacy as defined in s.
122 893.055, Florida Statutes, that is contained in records that are
123 held by the Department of Health under s. 893.055, Florida
124 Statutes, the electronic prescription drug monitoring system for
125 the monitoring of the prescribing and dispensing of controlled
126 substances, be made confidential and exempt from public records
127 requirements. Specifically, the Legislature finds that it is a
128 public necessity to make confidential and exempt the name,
129 address, telephone number, insurance plan number, government-
130 issued identification number, provider number, Drug Enforcement
131 Administration number, and any other unique identifying
132 information or number. Information concerning the prescriptions
133 that have been prescribed or dispensed to a patient is a
134 private, personal matter between the patient, the practitioner,
135 and the pharmacist. Nevertheless, the reporting of prescriptions
136 on a timely and accurate basis by dispensing practitioners and
137 pharmacists will ensure the ability of the state to review and
138 provide oversight of prescribing and dispensing practices.
139 Further, the reporting of this information will facilitate
140 investigations and prosecutions of violations of state drug laws

141 by patients, practitioners, and pharmacists, thereby increasing
142 compliance with those laws. However, if in the process the
143 information that would identify a patient is not made
144 confidential and exempt from disclosure, any person could
145 inspect and copy the record and be aware of the patient's
146 prescriptions. The availability of such information to the
147 public would result in the invasion of the patient's privacy. If
148 the identity of the patient could be correlated with his or her
149 prescriptions and his or her prescription dispensing history, it
150 would be possible for the public to become aware of the diseases
151 or other medical concerns for which a patient is being treated
152 by his or her physician. This knowledge could be used to
153 embarrass or to humiliate a patient or to discriminate against
154 him or her. Requiring the reporting of prescribing and
155 dispensing information while protecting a patient's personal
156 identifying information will facilitate efforts to maintain
157 compliance with the state's drug laws and will facilitate the
158 sharing of information between health care practitioners and
159 pharmacists while maintaining and ensuring patient privacy.
160 Additionally, exempting from disclosure the personal identifying
161 information of practitioners will ensure that an individual will
162 not be able to identify which practitioners prescribe the
163 largest amount of a particular type of drug and to seek out
164 those practitioners in order to increase the likelihood of
165 obtaining a particular prescribed substance. Further, protecting
166 personal identifying information of pharmacists and dispensers
167 ensures that an individual will not be able to identify which
168 pharmacists, pharmacies, or dispensing health care practitioners

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169 dispense the largest amount of a particular controlled substance
170 and identify that pharmacy or dispensing health care
171 practitioner as a potential target for a robbery or burglary.
172 Thus, the Legislature finds that it is a public necessity to
173 make confidential and exempt from public records requirements
174 certain identification and location information of a patient or
175 patient's agent, a health care practitioner, a dispenser, an
176 employee of the practitioner who is acting on behalf of and at
177 the direction of the practitioner, a pharmacist, or a pharmacy.

178 Section 3. This act shall take effect July 1, 2009, if HB
179 897 or similar legislation establishing an electronic monitoring
180 system to monitor the prescribing and dispensing of controlled
181 substances is adopted in the same legislative session or an
182 extension thereof and becomes law.