

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1424

INTRODUCER: Senators Garcia and Sobel

SUBJECT: Epidemiological Monitoring Systems

DATE: March 5, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper	Wilson	HR	<b>Favorable</b>
2.	_____	_____	GO	_____
3.	_____	_____	HA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill authorizes the Florida Department of Health (DOH) to collaborate with and disclose information from patient records obtained from hospitals, ambulatory surgical centers, and mobile surgical facilities or the Agency for Health Care Administration (AHCA) to the United States Centers for Disease Control and Prevention (CDC) through epidemiological monitoring systems. The bill specifies that the epidemiological monitoring systems must meet federal standards for the protection of personal health information.

This bill substantially amends section 395.3025 of the Florida Statutes.

**II. Present Situation:**

Section 395.3025, F.S., authorizes the DOH to examine otherwise confidential patient records of a hospital, ambulatory surgical center or mobile surgical facility licensed in Florida for the purpose of epidemiological investigations. The DOH is authorized to examine patient records held by these facilities or by the AHCA. The unauthorized release of information by agents of the DOH which would identify an individual patient is a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. (maximum of 1 year in prison or \$1,000 fine).

**Protection of Personal Health Information/Patient Records**

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) established baseline health care privacy requirements for protected health information and established

security requirements for electronic protected health information.<sup>1</sup> The U.S. Department of Health and Human Services (HHS) issued the *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule) to set national standards for the protection of health information. The standards apply to health plans, health care clearinghouses, and health care providers.<sup>2</sup> The Privacy Rule does expressly permit disclosure of protected health information, without individual authorization, to public health authorities authorized by law to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to public health surveillance, investigation, and intervention.<sup>3</sup>

In Florida, patients have a constitutional right to privacy under Article I, Section 23 of the State Constitution. However, several statutes authorize the release of patient records without consent of the person to whom they pertain.<sup>4</sup> Section 395.3025(7)(a), F.S., provides that if the content of any record of patient treatment is provided under s. 395.3025, F.S., to a recipient other than the patient or the patient's representative, the recipient may use such information only for the purpose provided and may not further disclose any information to any other person or entity, unless expressly permitted by the written consent of the patient. A general authorization for the release of medical information is not sufficient for this purpose. The content of the patient treatment record is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

### **Epidemiological Monitoring Systems**

The National Healthcare Safety Network (NHSN) is an internet-based epidemiological surveillance system for the collection of patient and health care provider data.<sup>5</sup> Facility participation in the NHSN is voluntary and the system is administered by the CDC's Division of Healthcare Quality Promotion.<sup>6</sup>

Data collected by the NHSN includes both patient and facility information in an electronic format. Section 308(d) of the federal Public Health Service Act provides for "Assurance of Confidentiality" statements which are "used for projects conducted by CDC staff or contractors that involve the collection or maintenance of sensitive identifiable or potentially identifiable information."<sup>7</sup> Projects related to the NHSN operate under the following Assurance of Confidentiality:

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<sup>1</sup> United States Department of Health and Human Services, Office of Civil Rights, *Summary of the HIPAA Privacy Rule*. Available at: <<http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf>> (Last visited March 5, 2010).

<sup>2</sup> Health care providers include all "providers of services" (e.g., institutional providers such as hospitals) and "providers of medical or health services" (e.g., non-institutional providers such as physicians, dentists and other practitioners) as defined by Medicare, and any other person or organization that furnishes, bills, or is paid for health care.

Source: HHS, Office of Civil Rights, *Summary of the HIPAA Privacy Rule*. Available at: <<http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf>> (Last visited March 5, 2010).

<sup>3</sup> HIPAA Privacy Rule and Public Health, Guidance from CDC and the U.S. Department of Health and Human Services, April 11, 2003. Available at: <<http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm>> (Last visited March 5, 2010).

<sup>4</sup> See for example: s. 381.0031, F.S., s. 395.3025, F.S., or s. 405.01, F.S.

<sup>5</sup> Centers for Disease Control and Prevention (CDC), "About NHSN." Available at: <<http://www.cdc.gov/nhsn/about.html>> (Last visited March 5, 2010).

<sup>6</sup> *Ibid.*

<sup>7</sup> CDC, Assurance of Confidentiality. Available at: <<http://www.cdc.gov/od/science/regs/privacy/>> (Last visited March 5, 2010).

“The information obtained in this surveillance system that would permit identification of any individual or institution is collected with a guarantee that it will be held in strict confidence, will be used only for the purposes stated, and will not be disclosed or released without the consent of the individual, or the institution in accordance with Section 304, 306, and 308(d) of the Public Health Service Act (42 USC 242b, 242k, and 242m(d)).”<sup>8</sup>

As a part of the 2009 American Recovery and Reinvestment Act (ARRA), the federal government made available grant money from the CDC to states for data collection relating to healthcare-associated infections. The funding is available through the Epidemiology and Laboratory Capacity for Infectious Diseases Program (ELC Program) for a period of up to two years to build and improve state response to healthcare-associated infections.<sup>9</sup> The DOH received a \$1.7 million ARRA grant for healthcare-associated infection prevention. According to the DOH, \$1 million of the grant will be unusable without passage of this bill.

### **III. Effect of Proposed Changes:**

This bill amends s. 395.3025, F.S., to authorize the DOH to collaborate with and disclose information from patient records held by a licensed hospital, ambulatory surgical center or mobile surgical facility, or the AHCA, to the CDC as part of the epidemiological monitoring systems to which both the DOH and the CDC staff have access, as long as the systems meet federal standards for the protection of personal health information.

The effective date of this bill is July 1, 2010.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

#### **B. Public Records/Open Meetings Issues:**

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

#### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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<sup>8</sup> CDC, “About NHSN.” Available at: <<http://www.cdc.gov/nhsn/about.html>> (Last visited March 5, 2010).

<sup>9</sup> CDC, Healthcare-Associated Infections: Recovery Act, “About Epidemiology and Laboratory Capacity for Infectious Diseases (ELC) Funding,” Available at: <<http://www.cdc.gov/HAI/recoveryact/aboutELC.html>> (Last visited March 5, 2010).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the DOH Bill Analysis, Economic Statement, and Fiscal Note, this bill would allow the DOH to make use of approximately \$1 million in ARRA grant funds that otherwise cannot be used. The DOH indicates that the funds would be fully spent, thus fulfilling the employment and economic stimulus purpose of ARRA-funded projects.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.