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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 1004.43, F.S., which
4 provides an exemption from public records and public
5 meetings requirements for the not-for-profit corporation
6 of the H. Lee Moffitt Cancer Center and Research Institute
7 and its subsidiaries; clarifying and reorganizing the
8 exemption; expanding the public records exemption to
9 include the identity of a donor or prospective donor to
10 the not-for-profit corporation or a subsidiary who wishes
11 to remain anonymous, rather than a donor or prospective
12 donor of property who wishes to remain anonymous;
13 expanding the public records exemption to include
14 patentable materials received, generated, ascertained, or
15 discovered during the course of research; revising the
16 information accessible by the Auditor General, the Office
17 of Program Policy Analysis and Government Accountability,
18 and the Board of Governors pursuant to their oversight and
19 auditing functions; defining "managed care," "proprietary
20 confidential business information," and "trade secret";
21 narrowing the public meetings exemption for the governing
22 board of the not-for-profit corporation and its
23 subsidiaries to include only those portions of meetings
24 wherein confidential and exempt information is discussed;
25 providing for future legislative review and repeal of the
26 exemption; providing a statement of public necessity;
27 providing an effective date.
28

29 Be It Enacted by the Legislature of the State of Florida:

30

31 Section 1. Subsections (8) and (9) of section 1004.43,
32 Florida Statutes, are amended to read:

33 1004.43 H. Lee Moffitt Cancer Center and Research
34 Institute.—There is established the H. Lee Moffitt Cancer Center
35 and Research Institute at the University of South Florida.

36 (8) (a) Records of the not-for-profit corporation and of
37 its subsidiaries are public records unless made confidential or
38 exempt by law.

39 (b) The following information is confidential and exempt
40 from s. 119.07(1) and s. 24(a), Art. I of the State
41 Constitution:

42 1. Information received by the not-for-profit corporation
43 or a subsidiary from a person in another state or nation or the
44 Federal Government that is otherwise exempt or confidential
45 pursuant to the laws of that state or nation or pursuant to
46 federal law.

47 2. Information received by the not-for-profit corporation
48 or a subsidiary in the performance of its duties and
49 responsibilities which is otherwise confidential or exempt by
50 law.

51 3. Matters reasonably encompassed in privileged attorney-
52 client communications.

53 4. Proprietary confidential business information ~~is~~
54 ~~confidential and exempt from the provisions of s. 119.07(1) and~~
55 ~~s. 24(a), Art. I of the State Constitution.~~

56 5. Records of credentialing panels and committees and of

57 the governing board of the not-for-profit corporation or its
 58 subsidiaries relating to credentialing.

59 6. The identity of a donor or prospective donor to the
 60 not-for-profit corporation or a subsidiary who wishes to remain
 61 anonymous.

62 7. Trade secrets.

63 (c) However, The Auditor General, the Office of Program
 64 Policy Analysis and Government Accountability, and the Board of
 65 Governors, pursuant to their oversight and auditing functions,
 66 must be given access to all ~~proprietary confidential business~~
 67 information made confidential and exempt under paragraph (b),
 68 upon request and without subpoena and must maintain the
 69 confidentiality of information so received.

70 (d) As used in this subsection ~~paragraph~~, the term:

71 1. "Managed care" means systems or techniques generally
 72 used by third-party payors or their agents to affect access to
 73 and control payment for health care services. Managed-care
 74 techniques most often include one or more of the following:

75 a. Prior, concurrent, and retrospective review of the
 76 medical necessity and appropriateness of services or site of
 77 services;

78 b. Contracts with selected health care providers;

79 c. Financial incentives or disincentives related to the
 80 use of specific providers, services, or service sites;

81 d. Controlled access to and coordination of services by a
 82 case manager; and

83 e. Payor efforts to identify treatment alternatives and
 84 modify benefit restrictions for high-cost patient care.

85 2. "Proprietary confidential business information" means
 86 information, regardless of its form or characteristics, that
 87 ~~which~~ is owned or controlled by the not-for-profit corporation
 88 or its subsidiaries; is intended to be and is treated by the
 89 not-for-profit corporation or its subsidiaries as private and
 90 the disclosure of which would harm the business operations of
 91 the not-for-profit corporation or its subsidiaries; has not been
 92 intentionally disclosed by the not-for-profit corporation or its
 93 subsidiaries unless pursuant to law, an order of a court or
 94 administrative body, a legislative proceeding pursuant to s. 5,
 95 Art. III of the State Constitution, or a private agreement that
 96 provides that the information may be released to the public; and
 97 that ~~which~~ is information concerning:

98 ~~a.1.~~ Internal auditing controls and reports of internal
 99 auditors;

100 ~~2.~~ ~~Matters reasonably encompassed in privileged attorney-~~
 101 ~~client communications;~~

102 ~~b.3.~~ Contracts for managed-care arrangements, including
 103 preferred provider organization contracts, health maintenance
 104 organization contracts, and exclusive provider organization
 105 contracts, and any records ~~documents~~ directly relating to the
 106 negotiation, performance, and implementation of any such
 107 contracts for managed-care arrangements;

108 ~~c.4.~~ Bids or other contractual data, banking records, and
 109 credit agreements the disclosure of which would impair the
 110 efforts of the not-for-profit corporation or its subsidiaries to
 111 contract for goods or services on favorable terms;

112 ~~d.5.~~ Information relating to private contractual data, the

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113 disclosure of which would impair the competitive interest of the
 114 provider of the information;

115 ~~e.6.~~ Corporate officer and employee personnel information;

116 ~~7.~~ Information relating to the proceedings and records of
 117 credentialing panels and committees and of the governing board
 118 of the not-for-profit corporation or its subsidiaries relating
 119 to credentialing;

120 ~~8.~~ Minutes of meetings of the governing board of the not-
 121 for-profit corporation and its subsidiaries, except minutes of
 122 meetings open to the public pursuant to subsection (9);

123 f.9. Information that reveals plans for marketing services
 124 that the not-for-profit corporation or its subsidiaries
 125 reasonably expect to be provided by competitors;

126 ~~10.~~ Trade secrets as defined in s. 688.002, including:

127 g.a. Information relating to methods of manufacture or
 128 production, potential trade secrets, or patentable or
 129 potentially patentable materials, ~~or proprietary information~~
 130 received, generated, ascertained, or discovered during the
 131 course of research conducted by the not-for-profit corporation
 132 or its subsidiaries; and

133 ~~h.b.~~ Reimbursement methodologies or rates. †

134 3. "Trade secret" means a trade secret as defined in s.
 135 688.002.

136 ~~11.~~ The identity of donors or prospective donors of
 137 property who wish to remain anonymous or any information
 138 identifying such donors or prospective donors. The anonymity of
 139 these donors or prospective donors must be maintained in the
 140 auditor's report; or

141 ~~12. Any information received by the not-for-profit~~
 142 ~~corporation or its subsidiaries from an agency in this or~~
 143 ~~another state or nation or the Federal Government which is~~
 144 ~~otherwise exempt or confidential pursuant to the laws of this or~~
 145 ~~another state or nation or pursuant to federal law.~~

146
 147 ~~As used in this paragraph, the term "managed care" means systems~~
 148 ~~or techniques generally used by third-party payors or their~~
 149 ~~agents to affect access to and control payment for health care~~
 150 ~~services. Managed care techniques most often include one or more~~
 151 ~~of the following: prior, concurrent, and retrospective review of~~
 152 ~~the medical necessity and appropriateness of services or site of~~
 153 ~~services; contracts with selected health care providers;~~
 154 ~~financial incentives or disincentives related to the use of~~
 155 ~~specific providers, services, or service sites; controlled~~
 156 ~~access to and coordination of services by a case manager; and~~
 157 ~~payor efforts to identify treatment alternatives and modify~~
 158 ~~benefit restrictions for high-cost patient care.~~

159 ~~(e)(e) This subsection is Subparagraphs 10. and 12. of~~
 160 ~~paragraph (b) are subject to the Open Government Sunset Review~~
 161 ~~Act in accordance with s. 119.15 and shall stand repealed on~~
 162 ~~October 2, 2015 2010, unless reviewed and saved from repeal~~
 163 ~~through reenactment by the Legislature.~~

164 ~~(9) (a) Those portions of meetings of the governing board~~
 165 ~~of the not-for-profit corporation and meetings of the~~
 166 ~~subsidiaries of the not-for-profit corporation at which~~
 167 ~~information made confidential and exempt pursuant to subsection~~
 168 ~~(8) are discussed are exempt from the expenditure of dollars~~

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169 ~~appropriated to the not-for-profit corporation by the state are~~
170 ~~discussed or reported must remain open to the public in~~
171 ~~accordance with s. 286.011 and s. 24(b), Art. I of the State~~
172 ~~Constitution, unless made confidential or exempt by law. Other~~
173 ~~meetings of the governing board of the not-for-profit~~
174 ~~corporation and of the subsidiaries of the not-for-profit~~
175 ~~corporation are exempt from s. 286.011 and s. 24(b), Art. I of~~
176 ~~the State Constitution.~~

177 (b) Minutes of closed meetings of the governing board of
178 the not-for-profit corporation and its subsidiaries are
179 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
180 of the State Constitution.

181 Section 2. The Legislature finds that it is a public
182 necessity to make confidential and exempt from public records
183 requirements the identity of a donor or prospective donor to the
184 not-for-profit corporation of the H. Lee Moffitt Cancer Center
185 and Research Institute or a subsidiary thereof who wishes to
186 remain anonymous. The Legislature finds that the identity of a
187 donor or prospective donor who wishes to remain anonymous should
188 be confidential and exempt from public disclosure in the same
189 manner as provided to direct-support organizations at the state
190 universities in s. 1004.28(5), Florida Statutes. This exemption
191 is necessary because the disclosure of such confidential and
192 exempt information may adversely impact the ability of the not-
193 for-profit corporation or its subsidiaries to receive donations
194 from individuals who request anonymity. In addition, the
195 Legislature finds that patentable materials received, generated,
196 ascertained, or discovered during the course of research

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197 conducted by or through the not-for-profit corporation of the H.
198 Lee Moffitt Cancer Center and Research Institute or a subsidiary
199 thereof must be made confidential and exempt because the
200 disclosure of such information would create an unfair
201 competitive advantage for persons receiving such information and
202 would adversely impact the not-for-profit corporation or its
203 subsidiaries. If such confidential and exempt information was
204 released pursuant to a public records request, others would be
205 allowed to avail themselves of the benefits of the research
206 without compensation or reimbursement to the not-for-profit
207 corporation or its subsidiaries. Without the exemptions provided
208 for in this act, the disclosure of confidential and exempt
209 information would place the not-for-profit corporation in an
210 unequal footing in the marketplace as compared with its private
211 research competitors that are not required to disclose
212 confidential and exempt information. The Legislature finds that
213 the disclosure of such confidential and exempt information would
214 adversely impact the ability of the not-for-profit corporation
215 or its subsidiaries to fulfill the mission of research and
216 education.

217 Section 3. This act shall take effect upon becoming a law.