

HB 7177

2014

1 A bill to be entitled

2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 893.0551, F.S.,
4 relating to an exemption from public record
5 requirements for certain information held by the
6 Department of Health pursuant to the prescription drug
7 monitoring program; specifying that the Attorney
8 General, health care regulatory boards, and law
9 enforcement agencies may disclose confidential and
10 exempt information in certain instances if such
11 information is relevant to an active investigation;
12 requiring the Attorney General, health care regulatory
13 boards, and law enforcement agencies to take certain
14 steps to ensure the continued confidentiality of all
15 nonrelevant confidential and exempt information before
16 disclosing such information; authorizing the
17 department to disclose, under certain circumstances,
18 relevant information to a law enforcement agency,
19 rather than requiring the department to disclose
20 confidential and exempt information; saving the
21 exemption from repeal under the Open Government Sunset
22 Review Act; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 893.0551, Florida Statutes, is amended

27 to read:

28 893.0551 Public records exemption for the prescription
29 drug monitoring program.—

30 (1) For purposes of this section, the terms used in this
31 section have the same meanings as provided in s. 893.055 ~~term:~~

32 ~~(a) "Active investigation" has the same meaning as~~
33 ~~provided in s. 893.055.~~

34 ~~(b) "Dispenser" has the same meaning as provided in s.~~
35 ~~893.055.~~

36 ~~(c) "Health care practitioner" or "practitioner" has the~~
37 ~~same meaning as provided in s. 893.055.~~

38 ~~(d) "Health care regulatory board" has the same meaning as~~
39 ~~provided in s. 893.055.~~

40 ~~(e) "Law enforcement agency" has the same meaning as~~
41 ~~provided in s. 893.055.~~

42 ~~(f) "pharmacist" means any person licensed under chapter~~
43 ~~465 to practice the profession of pharmacy.~~

44 ~~(g) "Pharmacy" has the same meaning as provided in s.~~
45 ~~893.055.~~

46 ~~(h) "Prescriber" has the same meaning as provided in s.~~
47 ~~893.055.~~

48 (2) The following information of a patient or patient's
49 agent, a health care practitioner, a dispenser, an employee of
50 the practitioner who is acting on behalf of and at the direction
51 of the practitioner, a pharmacist, or a pharmacy that is
52 contained in records held by the department under s. 893.055 is

53 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 54 of the State Constitution:

- 55 (a) Name.
- 56 (b) Address.
- 57 (c) Telephone number.
- 58 (d) Insurance plan number.
- 59 (e) Government-issued identification number.
- 60 (f) Provider number.
- 61 (g) Drug Enforcement Administration number.
- 62 (h) Any other unique identifying information or number.

63 (3) The department shall disclose such confidential and
 64 exempt information to the following persons or entities upon
 65 request and ~~entities~~ after using a verification process to
 66 ensure the legitimacy of the ~~that person's or entity's~~ request
 67 as provided in s. 893.055 ~~for the information:~~

68 (a) The Attorney General or ~~and~~ his or her designee when
 69 working on Medicaid fraud cases involving prescription drugs or
 70 when the Attorney General has initiated a review of specific
 71 identifiers of Medicaid fraud regarding prescription drugs. The
 72 Attorney General's Medicaid fraud investigators may not have
 73 direct access to the department's database. The Attorney General
 74 or his or her designee may disclose to a criminal justice
 75 agency, as defined in s. 119.011, only the confidential and
 76 exempt information received from the department that is relevant
 77 to a criminal justice agency as defined in s. 119.011 as part of
 78 an identified active investigation that prompted the request for

79 ~~the information is specific to a violation of prescription drug~~
 80 ~~abuse or prescription drug diversion law as it relates to~~
 81 ~~controlled substances. The Attorney General's Medicaid fraud~~
 82 ~~investigators may not have direct access to the department's~~
 83 ~~database.~~

84 (b) The department's relevant health care regulatory
 85 boards responsible for the licensure, regulation, or discipline
 86 of a practitioner, pharmacist, or other person who is authorized
 87 to prescribe, administer, or dispense controlled substances and
 88 who is involved in a specific controlled substances
 89 investigation for prescription drugs involving a designated
 90 person. The health care regulatory boards may request
 91 information from the department but may not have direct access
 92 to its database. The health care regulatory boards may provide
 93 ~~such information~~ to a law enforcement agency pursuant to ss.
 94 456.066 and 456.073 only information that is relevant to the
 95 specific controlled substances investigation that prompted the
 96 request for the information.

97 (c) A law enforcement agency that has initiated an active
 98 investigation involving a specific violation of law regarding
 99 prescription drug abuse or diversion of prescribed controlled
 100 substances. A law enforcement agency may request information
 101 from the department but may not have direct access to its
 102 database. The law enforcement agency may disclose to a criminal
 103 justice agency, as defined in s. 119.011, only the confidential
 104 and exempt information received from the department that is

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105 ~~relevant to a criminal justice agency as defined in s. 119.011~~
106 ~~as part of an identified active investigation that prompted the~~
107 ~~request for such information is specific to a violation of~~
108 ~~prescription drug abuse or prescription drug diversion law as it~~
109 ~~relates to controlled substances. A law enforcement agency may~~
110 ~~request information from the department but may not have direct~~
111 ~~access to its database.~~

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

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

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

121 (g) The patient's pharmacy, prescriber, or dispenser who
122 certifies that the information is necessary to provide medical
123 treatment to his or her current patient in accordance with s.
124 893.055.

125 (4) If the department determines consistent with its rules
126 that a pattern of controlled substance abuse exists, the
127 department may ~~shall~~ disclose such confidential and exempt
128 information to the applicable law enforcement agency in
129 accordance with s. 893.055(7)(f). The law enforcement agency may
130 disclose to a criminal justice agency, as defined in s. 119.011,

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131 only ~~the~~ confidential and exempt information received from the
132 department that is relevant to a criminal justice agency as
133 ~~defined in s. 119.011 as part of an identified~~ active
134 investigation that is specific to a violation of s.
135 893.13(7)(a)8., s. 893.13(8)(a), or s. 893.13(8)(b).

136 (5) Before disclosing confidential and exempt information
137 to a criminal justice agency or a law enforcement agency
138 pursuant to this section, the disclosing person or entity must
139 take steps to ensure the continued confidentiality of all
140 confidential and exempt information. At a minimum, these steps
141 must include redacting any nonrelevant information.

142 (6)-(5) An Any agency or person who obtains any such
143 confidential and exempt information pursuant to this section
144 must maintain the confidential and exempt status of that
145 information and may not disclose such information unless
146 authorized by law.

147 (7)-(6) A Any person who willfully and knowingly violates
148 this section commits a felony of the third degree, punishable as
149 provided in s. 775.082, s. 775.083, or s. 775.084.

150 ~~(7) This section is subject to the Open Government Sunset~~
151 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
152 ~~on October 2, 2014, unless reviewed and saved from repeal~~
153 ~~through reenactment by the Legislature.~~

154 Section 2. This act shall take effect October 1, 2014.