



HB 7177, Engrossed 1

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 a law enforcement agency to enter into a  
13          user agreement before such agency may receive  
14          information from the prescription drug monitoring  
15          database; requiring the Attorney General, health care  
16          regulatory boards, and law enforcement agencies to  
17          take certain steps to ensure the continued  
18          confidentiality of all nonrelevant confidential and  
19          exempt information before disclosing such information;  
20          authorizing the department to disclose, under certain  
21          circumstances, relevant information to a law  
22          enforcement agency, rather than requiring the  
23          department to disclose confidential and exempt  
24          information; prohibiting an agency or person who  
25          obtains specified confidential and exempt information  
26          from disclosing such information except under certain

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27           circumstances; saving the exemption from repeal under  
28           the Open Government Sunset Review Act; providing an  
29           effective date.

30

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

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33           Section 1. Section 893.0551, Florida Statutes, is amended  
34 to read:

35           893.0551 Public records exemption for the prescription  
36 drug monitoring program.—

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

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

41           ~~(b) "Dispenser" has the same meaning as provided in s.~~  
42 ~~893.055.~~

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

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

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

49           ~~(f) "pharmacist" means any person licensed under chapter~~  
50 ~~465 to practice the profession of pharmacy.~~

51           ~~(g) "Pharmacy" has the same meaning as provided in s.~~  
52 ~~893.055.~~



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53       ~~(h) "Prescriber" has the same meaning as provided in s.~~  
54       ~~893.055.~~

55       (2) The following information of a patient or patient's  
56       agent, a health care practitioner, a dispenser, an employee of  
57       the practitioner who is acting on behalf of and at the direction  
58       of the practitioner, a pharmacist, or a pharmacy that is  
59       contained in records held by the department under s. 893.055 is  
60       confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
61       of the State Constitution:

- 62       (a) Name.  
63       (b) Address.  
64       (c) Telephone number.  
65       (d) Insurance plan number.  
66       (e) Government-issued identification number.  
67       (f) Provider number.  
68       (g) Drug Enforcement Administration number.  
69       (h) Any other unique identifying information or number.

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

75       (a) The Attorney General or ~~and~~ his or her designee when  
76       working on Medicaid fraud cases involving prescription drugs or  
77       when the Attorney General has initiated a review of specific  
78       identifiers of Medicaid fraud regarding prescription drugs. The



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79 Attorney General's Medicaid fraud investigators may not have  
80 direct access to the department's database. The Attorney General  
81 or his or her designee may disclose to a criminal justice  
82 agency, as defined in s. 119.011, only the confidential and  
83 exempt information received from the department that is relevant  
84 ~~to a criminal justice agency as defined in s. 119.011 as part of~~  
85 ~~an identified active investigation that prompted the request for~~  
86 ~~the information is specific to a violation of prescription drug~~  
87 ~~abuse or prescription drug diversion law as it relates to~~  
88 ~~controlled substances. The Attorney General's Medicaid fraud~~  
89 ~~investigators may not have direct access to the department's~~  
90 ~~database.~~

91 (b) The department's relevant health care regulatory  
92 boards responsible for the licensure, regulation, or discipline  
93 of a practitioner, pharmacist, or other person who is authorized  
94 to prescribe, administer, or dispense controlled substances and  
95 who is involved in a specific controlled substances  
96 investigation for prescription drugs involving a designated  
97 person. The health care regulatory boards may request  
98 information from the department but may not have direct access  
99 to its database. The health care regulatory boards may provide  
100 ~~such information~~ to a law enforcement agency pursuant to ss.  
101 456.066 and 456.073 only information that is relevant to the  
102 specific controlled substances investigation that prompted the  
103 request for the information.

104 (c) A law enforcement agency that has initiated an active



105 investigation involving a specific violation of law regarding  
106 prescription drug abuse or diversion of prescribed controlled  
107 substances and that has entered into a user agreement with the  
108 department. A law enforcement agency may request information  
109 from the department but may not have direct access to its  
110 database. The law enforcement agency may disclose to a criminal  
111 justice agency, as defined in s. 119.011, only ~~the~~ confidential  
112 and exempt information received from the department that is  
113 relevant ~~to a criminal justice agency as defined in s. 119.011~~  
114 ~~as part of~~ an identified active investigation that prompted the  
115 request for such information ~~is specific to a violation of~~  
116 ~~prescription drug abuse or prescription drug diversion law as it~~  
117 ~~relates to controlled substances. A law enforcement agency may~~  
118 ~~request information from the department but may not have direct~~  
119 ~~access to its database.~~

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

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

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

129 (g) The patient's pharmacy, prescriber, or dispenser who  
130 certifies that the information is necessary to provide medical



131 treatment to his or her current patient in accordance with s.  
132 893.055.

133 (4) If the department determines consistent with its rules  
134 that a pattern of controlled substance abuse exists, the  
135 department may ~~shall~~ disclose such confidential and exempt  
136 information to the applicable law enforcement agency in  
137 accordance with s. 893.055-~~(7)~~-~~(f)~~. The law enforcement agency may  
138 disclose to a criminal justice agency, as defined in s. 119.011,  
139 only ~~the~~ confidential and exempt information received from the  
140 department that is relevant to a ~~criminal justice agency as~~  
141 ~~defined in s. 119.011 as part of an~~ identified active  
142 investigation that is specific to a violation of s.  
143 893.13(7)(a)8., s. 893.13(8)(a), or s. 893.13(8)(b).

144 (5) Before disclosing confidential and exempt information  
145 to a criminal justice agency or a law enforcement agency  
146 pursuant to this section, the disclosing person or entity must  
147 take steps to ensure the continued confidentiality of all  
148 confidential and exempt information. At a minimum, these steps  
149 must include redacting any nonrelevant information.

150 ~~(6)-(5)~~ An ~~Any~~ agency or person who obtains any ~~such~~  
151 confidential and exempt information pursuant to this section  
152 must maintain the confidential and exempt status of that  
153 information and may not disclose such information unless  
154 authorized by law. Information shared with a state attorney  
155 pursuant to paragraph (3)(a) or paragraph (3)(c) may be released  
156 only in response to a discovery demand if such information is



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157 directly related to the criminal case for which the information  
158 was requested. Unrelated information may be released only upon  
159 an order of a court of competent jurisdiction.

160 (7)(6) A Any person who willfully and knowingly violates  
161 this section commits a felony of the third degree, punishable as  
162 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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