

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7117      PCB FTC 15-03      Pub. Rec./Capital Recovery Reports

**SPONSOR(S):** State Affairs Committee, Finance & Tax Committee, Fant

**TIED BILLS:** CS/HB 7115      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee	11 Y, 3 N	Wolfgang	Langston
1) State Affairs Committee	11 Y, 4 N, As CS	Williamson	Camechis

### SUMMARY ANALYSIS

HB 7115 requires hospital districts to collect and submit to an approved provider under contract with the Department of Financial Services (department) information on claims and denial of claims for payment for medical services issued to insurers and governmental entities. Using this information, the approved provider under contract with the department will calculate a "denial rate", which will affect whether the hospital district can levy additional ad valorem taxes.

This bill, which is linked to the passage of HB 7115, creates a public record exemption for personal identifying information and health information held by the department, or by an approved provider under contract with the department, pursuant to a capital recovery report. The department and an approved provider may share the information with each other, and may release data or rate information so long as it does not include confidential and exempt information.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date that is contingent on the passage of the hospital capital recovery bill or similar legislation.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> (act) provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:<sup>3</sup>

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>4</sup>

###### HB 7115 – Capital Recovery

HB 7115 requires each hospital district to submit a capital recovery report to the approved provider under contract with the Department of Financial Services (department) within 60 calendar days of the end of the fiscal year. The report must contain data on all claims submitted electronically by all medical facilities in a hospital district to a government entity or insurance company for payment during the fiscal year, along with data on the response and payment status of all such claims. A certified public accountant must attest that the report is accurate, complete, and consistent with generally accepted accounting principles.

Each hospital district may prepare the report itself, or it may hire an approved provider<sup>5</sup> to prepare the report on its behalf. The report is used by the department's approved provider to calculate a denial rate. The denial rate is defined as the dollar value of all unpaid electronically submitted claims (based on the contracted or published rate for such claims) as a percentage of the total claims submitted electronically during the same time period. Any claims made to an insurer that has declared bankruptcy are removed from the calculation of the denial rate.

---

<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 119.15(3), F.S.

<sup>5</sup> HB 7115 defines the term "approved provider" to mean a business that generates at least 85 percent of its revenues from denied claims management, that has been in existence for at least 5 years, and that employs at least 30 certified claims specialists.

If the hospital district does not meet denial rate benchmarks set in the bill or if it does not timely submit a capital recovery report to the department, then the hospital district will not be able to increase its tax revenues.

### **Effect of Proposed Changes**

This bill creates a public record exemption for personal identifying information and health information held by the department, or by an approved provider under contract with the department, pursuant to a capital recovery report. The bill authorizes the department and an approved provider to share the confidential and exempt<sup>6</sup> information with each other. In addition, the department or an approved provider may release information if it is presented as numerical data or denial rates; however, the data or rate information may not include any confidential and exempt information.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

The bill provides an effective date that is contingent upon the passage of CS/HB 7115 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

#### **B. SECTION DIRECTORY:**

Section 1: Creates s. 189.057, F.S., to create a public record exemption for personal identifying information and health information held by the department or an approved provider pursuant to a capital recovery report.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date contingent upon the passage of CS/HB 7115 or similar legislation.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

The bill may create a minimal fiscal impact on the department or approved provider because staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, the department could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed as they are part of the day-to-day responsibilities.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

---

<sup>6</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for personal identifying information contained in a capital recovery report. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its stated purpose.

Right to Privacy

Article I, s. 23 of the State Constitution grants all Florida citizens the right to privacy. Consequently, Florida courts have recognized patients' rights to secure the confidentiality of their health information (medical records); however, that right must be balanced with and yields to any compelling state interest.<sup>7</sup>

B. RULE-MAKING AUTHORITY:

None.

---

<sup>7</sup> See *State v. Johnson*, 814 So.2d 390 (Fla. 2002); distinguished in *Limbaugh v. State of Florida* 887 So.2d 387 (Fla. 4th DCA 2004); and *Rasmussen v. S. Fla. Blood Serv. Inc.*, 500 So.2d 533 (Fla. 1987) (privacy interests of blood donors defeated AIDS victim's claim to obtain via subpoena names and addresses of blood donors who may have contributed the tainted blood).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 8, 2015, the State Affairs Committee heard a proposed committee substitute for HB 7117 and reported the bill favorably with committee substitute. The committee substitute:

- Clarifies that the public record exemption applies to personal identifying information and health information, whereas the bill protected “personally identifiable health information.”
- Clarifies that the public record exemption applies to such information held by the Department of Financial Services or an approved provider under contract with the department. The bill did not provide this specification.
- Authorizes the department or an approved provider to share the confidential and exempt information with each other. The bill did not authorize the confidential and exempt information to be shared.
- Conforms the public necessity statement to the revised public record exemption.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.