

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1101 Pub. Rec./Advanced Birth Centers
SPONSOR(S): Magar
TIED BILLS: HB 1099 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	14 Y, 0 N	Royal	McElroy
2) Oversight, Transparency & Administration Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A birth center is any facility, institution, or place, which is not an ambulatory surgical center, a hospital or in a hospital, in which births are planned to occur away from the mother's usual residence following a normal, uncomplicated, low-risk pregnancy. Birth centers are licensed and regulated by the Agency for Health Care Administration (AHCA) under ch. 383, F.S., and part II of ch. 408, F.S.

Birth centers must maintain clinical records that include patient's identifying information and health information. Clinical records must be kept confidential pursuant to s. 456.057, F.S. and are exempt from s. 119.07(1), F.S. Clinical records may only be open to inspection if consent to release the information has been signed by the patient or the review is made by AHCA for a licensure survey or complaint investigation.

Birth centers must maintain and make available to the public upon request, inspection reports issued by any government agency. Any record, report, or document related to inspection reports that is confidential under federal law or state regulation is exempt from s. 119.07(1), F.S.

HB 1099 creates a new licensure program with AHCA for advanced birth centers. An advanced birth center is a birth center authorized and equipped to accept patients who plan to have a vaginal delivery of a fetus with a gestational age of 37 to 41 weeks or who have had or plan to have a caesarean delivery. The advanced birth center license is modeled after the current licensure program for birth centers, subjecting advanced birth centers to similar regulatory standards, inspections and rules.

HB 1101 amends the current requirements relating to clinical records and inspection reports of birth centers to include advanced birth centers. The bill requires advanced birth centers to maintain clinical records that include patient's identifying information and health information. The bill amends the current public records exemption for confidential information in the clinical records and inspection reports of birth centers to include the confidential information in the clinical records and inspection reports of advanced birth centers.

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

The bill takes effect on the same date that HB 1099 or similar legislation takes effect, if such legislation is adopted in the same legislative session.

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 or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The public also has a right to notice of and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is a specific exemption provided by law.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰ There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act and also confidential.

Exempt Records

If a record is exempt, the specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or article I, section 24 of the Florida Constitution. If records are only exempt from the Public Records Act and not confidential, the exemption does not

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(2), F.S. defines "agency" as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ FLA. CONST., art. I, s. 24(c).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

prohibit the showing of such information, but simply exempts the records from the mandatory disclosure requirements in s. 119.07(1)(a), F.S.¹¹

Confidential Records

The term "confidential" is not defined in the Public Records Act; however, it is used in article I, section 24 of the Florida Constitution, which provides that every person has the right to inspect or copy any public record, except with respect to records exempted pursuant to the Constitution or specifically made confidential by the Constitution. If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in statute.¹²

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public record or open meeting exemptions.¹³ The OGSR 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.¹⁴

The OGSR provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to accomplish its purpose.¹⁵ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt; or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁷

Confidentiality of Patient Records

Pursuant to s. 456.057, patient records created and maintained by health care practitioners licensed by the Department of Health (DOH) may not furnish those records to any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient.

However, such records may be furnished without written authorization under the following circumstances:

¹¹ See, *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), rev. denied, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3)(d), F.S. [now s. 119.071(2)(c), F.S.] "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not prohibit the showing of such information." *Id.* at 686.

¹² *WFTV, Inc. v. School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), rev. denied, 892 So. 2d 1015 (Fla. 2004). See also, 04-09 Fla Op. Att'y Gen. (2004) and 86-97 Fla Op. Att'y Gen. (1986).

¹³ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

- To any person, firm, or corporation that has procured or furnished such care or treatment with the patient's consent.
- When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.
- To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.
- To the Department of Children and Families, its agent, or its contracted entity, for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.

DOH may obtain patient records pursuant to a subpoena without written authorization from the patient if it and the probable cause panel of the appropriate board, if any, find reasonable cause to believe a licensed health care practitioner has committed certain violations. All patient records obtained by DOH which identify the patient by name are confidential and exempt from s. 119.07(1), F.S.

Birth Centers

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HB 1099 (2018)

HB 1099 creates an advanced birth center license. An advanced birth center is a birth center authorized and equipped to accept patients who plan to have a vaginal delivery of a fetus with a gestational age of 37 to 41 weeks or who have had or plan to have a caesarean delivery. The advanced birth center license is modeled after the current licensure program for birth centers, subjecting advanced birth centers to similar regulatory standards, inspections and rules.

Effect of the Bill

The bill amends the current requirements relating to clinical records and inspection reports of birth centers to include advanced birth centers. The bill requires advanced birth centers to maintain clinical records that include patient's identifying information and health information. Under the bill, clinical records of advanced birth centers must be kept confidential pursuant to s. 456.057, F.S. and are

exempt from s. 119.07(1), F.S. The bill allows the clinical records of advanced birth centers to be open to inspection only if consent to release the information has been signed by the patient or the review is made by AHCA for a licensure survey or complaint investigation.

The bill requires inspection reports of advanced birth centers be made available to the public upon request. The bill makes any record, report, or document related to inspection reports that is confidential under federal law or state regulation exempt from s. 119.07(1), F.S.

The bill provides a public necessity statement as required by the State Constitution, which states that the exemption for information for clinical records and inspection reports held by an advanced birth center, which are confidential or exempt pursuant to state law, is necessary.

The bill takes effect on the same date that HB 1099 or similar legislation takes effect, if such legislation is adopted in the same legislative session.

B. SECTION DIRECTORY:

Section 1: Amends s. 383.32, F.S., relating to birth center clinical records.

Section 2: Amends s. 383.325, F.S., relating to inspection reports.

Section 3: Creates an unnumbered section of law relating to the public necessity for making exempt information for clinical records and inspection reports held by an advanced birth center.

Section 4: Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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 affect county or municipal governments.

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 public record or public meeting 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 or public meeting exemption. The bill creates a new 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 public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for the personal identifying information of patients that obtain marijuana for medical use and the physicians that certify patients for medical use of marijuana contained in the registry. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES