

1 A bill to be entitled
2 An act relating to the prescription drug monitoring
3 program; amending s. 893.055, F.S.; defining the term
4 "electronic health recordkeeping system"; requiring
5 the Department of Health to develop a unique
6 identifier for each patient in the system; prohibiting
7 the unique identifier from identifying or providing a
8 basis for identification by unauthorized individuals;
9 authorizing the Attorney General to request
10 information for an active investigation or pending
11 civil or criminal litigation involving prescribed
12 controlled substances; requiring such information to
13 be released upon the granting of a petition or motion
14 by a trial court; providing exceptions; requiring a
15 trial court to grant a petition or motion under
16 certain circumstances; limiting the patient
17 information the department may provide; authorizing
18 the Attorney General to introduce as evidence in
19 certain actions specified information that is released
20 to the Attorney General from the prescription drug
21 monitoring program; authorizing certain persons to
22 testify as to the authenticity of certain records;
23 amending s. 893.0551, F.S.; authorizing the Attorney
24 General to have access to records for active
25 investigations or pending civil or criminal litigation

26 | involving controlled substances; requiring such
 27 | information to be released upon the granting of a
 28 | petition or motion by a trial court; providing
 29 | exceptions; requiring a trial court to grant a
 30 | petition or motion under certain circumstances;
 31 | limiting the patient information the department may
 32 | provide; authorizing the release of specified
 33 | information shared with a state attorney only in
 34 | response to a discovery demand under certain
 35 | circumstances; providing an effective date.

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37 | Be It Enacted by the Legislature of the State of Florida:

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39 | Section 1. Paragraphs (f) through (k) of subsection (1) of
 40 | section 893.055, Florida Statutes, are redesignated as
 41 | paragraphs (g) through (l), respectively, paragraph (b) of
 42 | subsection (2) is redesignated as paragraph (c), paragraph (b)
 43 | of subsection (5) and subsection (10) are amended, a new
 44 | paragraph (f) is added to subsection (1), and a new paragraph
 45 | (b) is added to subsection (2) of that section, to read:

46 | 893.055 Prescription drug monitoring program.—

47 | (1) As used in this section, the term:

48 | (f) "Electronic health recordkeeping system" means an
 49 | electronic or computer-based information system used by health
 50 | care practitioners or providers to create, collect, store,

51 manipulate, exchange, or make available personal health
 52 information for the delivery of patient care.

53 (2)

54 (b) To protect personally identifiable information, the
 55 department shall assign a unique identifier to each patient for
 56 whom a record exists in the system. Such identifier may not
 57 identify or provide a reasonable basis to identify a patient by
 58 any person not authorized under this section to access
 59 personally identifiable information in the system.

60 (5) The following entities may not directly access
 61 information in the system, but may request information from the
 62 program manager or designated program and support staff:

63 (b) The Attorney General for:

64 1. Medicaid fraud cases involving prescribed controlled
 65 substances.

66 2. An active investigation or pending civil or criminal
 67 litigation involving prescribed controlled substances, other
 68 than Medicaid fraud cases, upon the granting of a petition or
 69 motion by a trial court. Notice to any party regarding such
 70 petition or motion is not required, except in cases of pending
 71 civil litigation. The trial court shall grant the petition or
 72 motion and authorize release of information when the information
 73 appears reasonably calculated to lead to the discovery of
 74 admissible evidence. The department may not release any patient
 75 information pursuant to this subparagraph other than the

76 patient's unique identifier assigned pursuant to paragraph
77 (2)(b), year of birth, and the county, city, and zip code where
78 the patient resides.

79 (10) Information in the prescription drug monitoring
80 program's system may be released only as provided in this
81 section and s. 893.0551.

82 (a) Except as provided in paragraph (b), the content of
83 the system is intended to be informational only. Information in
84 the system is not subject to discovery or introduction into
85 evidence in any civil or administrative action against a
86 prescriber, dispenser, pharmacy, or patient arising out of
87 matters that are the subject of information in the system. The
88 program manager and authorized persons who participate in
89 preparing, reviewing, issuing, or any other activity related to
90 management of the system may not be permitted or required to
91 testify in any such civil or administrative action as to any
92 findings, recommendations, evaluations, opinions, or other
93 actions taken in connection with management of the system.

94 (b) The Attorney General may introduce information from
95 the system released pursuant to subparagraph (5)(b)2. as
96 evidence in a civil, criminal, or administrative action against
97 a dispenser or a pharmacy. The program manager and authorized
98 persons who participate in preparing, reviewing, issuing, or any
99 other activity related to the management of the system may
100 testify for purposes of authenticating the records introduced

101 into evidence pursuant to this paragraph.

102 Section 2. Paragraph (e) of subsection (3) and subsection
103 (6) of section 893.0551, Florida Statutes, are amended to read:

104 893.0551 Public records exemption for the prescription
105 drug monitoring program.—

106 (3) The department shall disclose such information to the
107 following persons or entities upon request and after using a
108 verification process to ensure the legitimacy of the request as
109 provided in s. 893.055:

110 (e) The Attorney General or his or her designee:

111 1. When working on Medicaid fraud cases involving
112 prescribed controlled substances or when the Attorney General
113 has initiated a review of specific identifiers of Medicaid fraud
114 or specific identifiers that warrant a Medicaid investigation
115 regarding prescribed controlled substances. The Attorney
116 General's Medicaid fraud investigators may not have direct
117 access to the department's system. The Attorney General or his
118 or her designee may disclose to a criminal justice agency, as
119 defined in s. 119.011, only the information received from the
120 department that is relevant to an identified active
121 investigation that prompted the request for the information.

122 2. When pursuing an active investigation or pending civil
123 or criminal litigation involving prescribed controlled
124 substances, other than Medicaid fraud cases, upon granting of a
125 petition or motion by a trial court. Notice to any party

126 regarding such petition or motion is not required, except in
127 cases of pending civil litigation. The trial court shall grant
128 the petition or motion and authorize release of information when
129 the information appears reasonably calculated to lead to the
130 discovery of admissible evidence. The department may not release
131 any patient information pursuant to this subparagraph other
132 than the patient's unique identifier assigned pursuant to s.
133 893.055(2)(b), year of birth, and the county, city, and zip code
134 where the patient resides.

135 (6) An agency or person who obtains any information
136 pursuant to this section must maintain the confidential and
137 exempt status of that information and may not disclose such
138 information unless authorized by law. Information shared with a
139 state attorney pursuant to paragraph (3)(f), ~~or~~ paragraph
140 (3)(h), or with the Attorney General or his or her designee
141 pursuant to subparagraph (3)(e)2. may be released only in
142 response to a discovery demand if such information is directly
143 related to the ~~criminal~~ case for which the information was
144 requested. Unrelated information may be released only upon an
145 order of a court of competent jurisdiction.

146 Section 3. This act shall take effect July 1, 2019.