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CS/CS/HB 1253, Engrossed 2

2019 Legislature

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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 when ordered by a
25 court under specified provisions; providing for future

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26 repeal of amendments unless reviewed and saved from
 27 repeal through reenactment by the Legislature;
 28 providing for effect of amendments by other
 29 provisions; providing an effective date.

30

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

32

33 Section 1. Paragraphs (f) through (k) of subsection (1) of
 34 section 893.055, Florida Statutes, are redesignated as
 35 paragraphs (g) through (l), respectively, paragraph (b) of
 36 subsection (2) is redesignated as paragraph (c), paragraph (b)
 37 of subsection (5) and subsection (10) are amended, a new
 38 paragraph (f) is added to subsection (1), and a new paragraph
 39 (b) is added to subsection (2) of that section, to read:

40 893.055 Prescription drug monitoring program.—

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

42 (f) "Electronic health recordkeeping system" means an
 43 electronic or computer-based information system used by health
 44 care practitioners or providers to create, collect, store,
 45 manipulate, exchange, or make available personal health
 46 information for the delivery of patient care.

47 (2)

48 (b) To protect personally identifiable information, the
 49 department shall assign a unique identifier to each patient for
 50 whom a record exists in the system. Such identifier may not

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51 identify or provide a reasonable basis to identify a patient by
52 any person not authorized under this section to access
53 personally identifiable information in the system.

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

57 (b) The Attorney General for:

58 1. Medicaid fraud cases involving prescribed controlled
59 substances.

60 2. An active investigation or pending civil or criminal
61 litigation involving prescribed controlled substances, other
62 than Medicaid fraud cases, upon the granting of a petition or
63 motion by a trial court which specifically identifies the active
64 or pending matter. The Attorney General shall ensure that
65 information obtained under this subparagraph is not used for any
66 purpose other than the specific matter stated in the petition or
67 motion. Notice to any party regarding such petition or motion is
68 not required, except in cases of pending civil litigation. The
69 trial court shall grant the petition or motion and authorize
70 release of information when the information appears reasonably
71 calculated to lead to the discovery of admissible evidence. The
72 department may not release any patient information pursuant to
73 this subparagraph other than the patient's unique identifier
74 assigned pursuant to paragraph (2) (b), year of birth, and the
75 county, city, and zip code where the patient resides, consistent

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76 | with the provisions of the Health Insurance Portability and
77 | Accountability Act of 1996 and its implementing regulations. The
78 | Attorney General shall maintain a log of each person with whom
79 | the information is shared to document the chain of custody,
80 | execute a confidentiality agreement or an agreement bound by a
81 | protective order with each such person, ensure that the
82 | information is maintained in a secure manner, and require each
83 | such person to return all information or certify its destruction
84 | under penalty of perjury to the Attorney General upon the final
85 | resolution of the matter for which the information was
86 | requested.

87 | (10) Information in the prescription drug monitoring
88 | program's system may be released only as provided in this
89 | section and s. 893.0551.

90 | (a) Except as provided in paragraph (b), the content of
91 | the system is intended to be informational only. Information in
92 | the system is not subject to discovery or introduction into
93 | evidence in any civil or administrative action against a
94 | prescriber, dispenser, pharmacy, or patient arising out of
95 | matters that are the subject of information in the system. The
96 | program manager and authorized persons who participate in
97 | preparing, reviewing, issuing, or any other activity related to
98 | management of the system may not be permitted or required to
99 | testify in any such civil or administrative action as to any
100 | findings, recommendations, evaluations, opinions, or other

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101 actions taken in connection with management of the system.

102 (b) The Attorney General may introduce information from
103 the system released pursuant to subparagraph (5)(b)2. as
104 evidence in a civil, criminal, or administrative action against
105 a dispenser, manufacturer, or a pharmacy. The program manager
106 and authorized persons who participate in preparing, reviewing,
107 issuing, or any other activity related to the management of the
108 system may testify for purposes of authenticating the records
109 introduced into evidence pursuant to this paragraph.

110 Section 2. Paragraph (e) of subsection (3) and subsection
111 (6) of section 893.0551, Florida Statutes, are amended to read:
112 893.0551 Public records exemption for the prescription
113 drug monitoring program.—

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

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

119 1. When working on Medicaid fraud cases involving
120 prescribed controlled substances or when the Attorney General
121 has initiated a review of specific identifiers of Medicaid fraud
122 or specific identifiers that warrant a Medicaid investigation
123 regarding prescribed controlled substances. The Attorney
124 General's Medicaid fraud investigators may not have direct
125 access to the department's system. The Attorney General or his

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126 or her designee may disclose to a criminal justice agency, as
127 defined in s. 119.011, only the information received from the
128 department that is relevant to an identified active
129 investigation that prompted the request for the information.

130 2. Upon a court order authorizing the release of patient
131 information under s. 893.055(5)(b)2.

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

143 Section 3. The amendments to ss. 893.055 and 893.0551,
144 Florida Statutes, made by this act shall stand repealed on June
145 30, 2021, unless reviewed and saved from repeal through
146 reenactment by the Legislature. If such amendments are not saved
147 from repeal, the text of ss. 893.055 and 893.0551, Florida
148 Statutes, shall revert to that in existence on June 30, 2019,
149 except that any amendments to such text other than by this act
150 shall be preserved and continue to operate to the extent that

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151 such amendments are not dependent upon the portions of text
152 which expire pursuant to this section.

153 Section 4. This act shall take effect July 1, 2019.