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LEGISLATIVE ACTION

Senate

.

House

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Floor: NC/2R

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05/02/2019 11:39 AM

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Senator Lee moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present paragraphs (f) through (k) of subsection
(1) of section 893.055, Florida Statutes, are redesignated as
paragraphs (g) through (l), respectively, present paragraph (b)
of subsection (2) is redesignated as paragraph (c), a new
paragraph (f) is added to subsection (1) and a new paragraph (b)
is added to subsection (2) of that section, and paragraph (b) of
subsection (5) and subsection (10) are amended, to read:



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12 893.055 Prescription drug monitoring program.—

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

14 (f) "Electronic health recordkeeping system" means an
15 electronic or computer-based information system used by health
16 care practitioners or providers to create, collect, store,
17 manipulate, exchange, or make available personal health
18 information for the delivery of patient care.

19 (2)

20 (b) To protect personally identifiable information, the
21 department shall assign a unique identifier to each patient for
22 whom a record exists in the system. Such identifier may not
23 identify or provide a reasonable basis to identify a patient by
24 any person not authorized under this section to access
25 personally identifiable information in the system.

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

29 (b) The Attorney General for:

30 1. Medicaid fraud cases involving prescribed controlled
31 substances.

32 2. An active investigation or pending civil or criminal
33 litigation involving prescribed controlled substances, other
34 than Medicaid fraud cases, upon the granting of a petition or
35 motion by a trial court which specifically identifies the active
36 or pending matter. The Attorney General shall ensure that
37 information obtained under this subparagraph is not used for any
38 purpose other than the specific matter stated in the petition or
39 motion. Notice to any party regarding such petition or motion is
40 not required, except in cases of pending civil litigation. The



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41 trial court shall grant the petition or motion and authorize
42 release of information when the information appears reasonably
43 calculated to lead to the discovery of admissible evidence. The
44 department may not release any patient information pursuant to
45 this subparagraph other than the patient's unique identifier
46 assigned pursuant to paragraph (2)(b), year of birth, and the
47 county, city, and zip code where the patient resides, consistent
48 with the provisions of the Health Insurance Portability and
49 Accountability Act of 1996 and its implementing regulations. The
50 Attorney General shall maintain a log of each person with whom
51 the information is shared to document the chain of custody,
52 execute a confidentiality agreement or an agreement bound by a
53 protective order with each such person, ensure that the
54 information is maintained in a secure manner, and require each
55 such person to return all information or certify its destruction
56 under penalty of perjury to the Attorney General upon the final
57 resolution of the matter for which the information was
58 requested.

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

62 (a) Except as provided in paragraph (b), the content of the
63 system is intended to be informational only. Information in the
64 system is not subject to discovery or introduction into evidence
65 in any civil or administrative action against a prescriber,
66 dispenser, pharmacy, or patient arising out of matters that are
67 the subject of information in the system. The program manager
68 and authorized persons who participate in preparing, reviewing,
69 issuing, or any other activity related to management of the



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70 system may not be permitted or required to testify in any such
71 civil or administrative action as to any findings,
72 recommendations, evaluations, opinions, or other actions taken
73 in connection with management of the system.

74 (b) The Attorney General may introduce information from the
75 system released pursuant to subparagraph (5) (b)2. as evidence in
76 a civil, criminal, or administrative action against a dispenser,
77 manufacturer, or a pharmacy. The program manager and authorized
78 persons who participate in preparing, reviewing, issuing, or any
79 other activity related to the management of the system may
80 testify for purposes of authenticating the records introduced
81 into evidence pursuant to this paragraph.

82 Section 2. Paragraph (e) of subsection (3) and subsection
83 (6) of section 893.0551, Florida Statutes, are amended to read:
84 893.0551 Public records exemption for the prescription drug
85 monitoring program.—

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

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

91 1. When working on Medicaid fraud cases involving
92 prescribed controlled substances or when the Attorney General
93 has initiated a review of specific identifiers of Medicaid fraud
94 or specific identifiers that warrant a Medicaid investigation
95 regarding prescribed controlled substances. The Attorney
96 General's Medicaid fraud investigators may not have direct
97 access to the department's system. The Attorney General or his
98 or her designee may disclose to a criminal justice agency, as



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99 defined in s. 119.011, only the information received from the
100 department that is relevant to an identified active
101 investigation that prompted the request for the information.

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

104 (6) An agency or person who obtains any information
105 pursuant to this section must maintain the confidential and
106 exempt status of that information and may not disclose such
107 information unless authorized by law. Information shared with a
108 state attorney pursuant to paragraph (3)(f), ~~or~~ paragraph
109 (3)(h), or with the Attorney General or his or her designee
110 pursuant to subparagraph (3)(e)2. may be released only in
111 response to a discovery demand if such information is directly
112 related to the ~~criminal~~ case for which the information was
113 requested. Unrelated information may be released only upon an
114 order of a court of competent jurisdiction.

115 Section 3. The amendments to ss. 893.055 and 893.0551,
116 Florida Statutes, made by this act shall stand repealed on June
117 30, 2021, unless reviewed and saved from repeal through
118 reenactment by the Legislature. If such amendments are not saved
119 from repeal, the text of ss. 893.055 and 893.0551, Florida
120 Statutes, shall revert to that in existence on June 30, 2019,
121 except that any amendments to such text other than by this act
122 shall be preserved and continue to operate to the extent that
123 such amendments are not dependent upon the portions of text
124 which expire pursuant to this section.

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

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127 ===== T I T L E A M E N D M E N T =====



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128 And the title is amended as follows:

129 Delete everything before the enacting clause
130 and insert:

131 A bill to be entitled
132 An act relating to the prescription drug monitoring
133 program; amending s. 893.055, F.S.; defining the term
134 "electronic health recordkeeping system"; requiring
135 the Department of Health to assign a unique identifier
136 to each patient in the system; prohibiting the unique
137 identifier from identifying or providing a basis for
138 identification by unauthorized individuals;
139 authorizing the Attorney General to request
140 information for an active investigation or pending
141 civil or criminal litigation involving prescribed
142 controlled substances; requiring such information to
143 be released upon the granting of a petition or motion
144 by a trial court; providing exceptions; requiring a
145 trial court to grant a petition or motion under
146 certain circumstances; limiting the patient
147 information the department may provide; authorizing
148 the Attorney General to introduce as evidence in
149 certain actions specified information that is released
150 to the Attorney General from the prescription drug
151 monitoring program; authorizing certain persons to
152 testify as to the authenticity of certain records;
153 amending s. 893.0551, F.S.; authorizing the Attorney
154 General to have access to records when ordered by a
155 court under specified provisions; providing for future
156 repeal of amendments unless reviewed and saved from



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157 repeal through reenactment by the Legislature;
158 providing for effect of amendments by other
159 provisions; providing an effective date.