

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7009 PCB OTM 19-01 OGSR/Identification and Location Information/Department of Health

SPONSOR(S): Oversight, Transparency & Public Management Subcommittee; Good

TIED BILLS: **IDEN./SIM. BILLS:** SB 7004

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Toliver	Harrington
1) Health Quality Subcommittee	15 Y, 0 N	Gilani	McElroy
2) State Affairs Committee	22 Y, 0 N	Toliver	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Department of Health (DOH) regulates health care practitioners and certain health care facilities. DOH also determines medical eligibility for disability benefits under the federal Social Security Administration disability programs.

Current law provides a public record exemption for DOH personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities. The information held exempt from public record requirements includes:

- The home addresses, telephone numbers, dates of birth, and photographs of DOH personnel;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by the children of DOH personnel.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2019, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Department of Health

Regulation of Professions

The Department of Health (DOH) is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.⁵ Practitioner regulation is conducted by the Division of Medical Quality Assurance (MQA). In addition to practitioner regulation, MQA also regulates certain health care facilities, such as pharmacies,⁶ pain management clinics,⁷ and trauma centers.⁸

As part of its enforcement responsibilities, DOH investigates complaints against health care practitioners. It must investigate any complaint that is written, signed by the complainant,⁹ and legally sufficient,¹⁰ and may initiate an investigation if it believes a violation of law or rule has occurred. Such

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ Section 20.43(1)(g), F.S.

⁶ See ch. 465, F.S.

⁷ See chs. 458 and 459, F.S.

⁸ See ch. 395, F.S.

⁹ DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. Section 456.073(1), F.S.

¹⁰ A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by DOH, or of any rule adopted by DOH or one of its regulatory boards has occurred. *Id.*

an investigation may result in an administrative case against the health care practitioner's license.¹¹ DOH also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by DOH.¹²

The Consumer Services Unit (CSU) within MQA is the central intake for all complaints. The CSU includes investigators and analysts assigned to specific professions. Staff reviews each complaint for possible violations of laws and rules and forwards only those complaints that are legally sufficient for investigation.¹³

The Investigative Services Unit (ISU) is the investigative arm of MQA. Generally, an investigation includes the following steps:

- Obtaining medical records, documentation, and evidence related to the complaint;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses;
- Drafting and serving subpoenas for necessary information; and
- Drafting the investigative report.

The ISU also conducts the required initial health care facility inspections before a facility begins operation and re-inspects on a periodic basis.¹⁴

The Prosecution Services Unit (PSU) within MQA provides legal services in the regulation of all health care boards and councils under MQA.¹⁵ Attorneys within PSU review the investigative report to recommend a course of action, which may include:

- Emergency orders against licensees who pose an immediate threat to the health, safety, and welfare of individuals;
- Expert reviews for complex cases that require professional health care experts to render an opinion;
- Closing orders if the investigation or the expert review does not support the allegations;¹⁶ or
- Administrative complaints when the investigation supports the allegations.

When an administrative complaint is filed, the subject has the right to choose a hearing, stipulation agreement, or voluntarily relinquish his or her license. In all of these instances, the case is then presented to the professional board or DOH for final agency action. If the subject appeals the final decision, the DOH attorney defends the final order before the appropriate appellate court.

Disability Determinations

The Division of Disability Determinations (DDD) within DOH¹⁷ is responsible for making the determination of medical eligibility for disability benefits under the federal Social Security Administration (SSA) disability programs (Social Security Disability-Title II and Supplemental Security Income-Title XVI). The DDD is also responsible for the periodic Continuing Disability Review of all SSA disability beneficiaries to determine if they continue to meet medical eligibility criteria.

¹¹ Upon completion of an investigation, DOH must submit a report to the probable cause panel of the appropriate regulatory board. *See* s. 456.073(2), F.S. If the probable cause panel finds that probable cause exists, it must direct DOH to file a formal administrative complaint against the licensee. If DOH declines to prosecute the complaint because it finds that probable cause has been impossibly found by the panel, the regulatory board may still pursue and prosecute an administrative complaint. Section 456.073(4), F.S.

¹² Section 456.066, F.S.

¹³ Florida Department of Health, *Consumer Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html> (last visited Jan. 15, 2019).

¹⁴ Florida Department of Health, *Investigative Services Unit Brochure*, available at http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/_documents/isu-brochure.pdf (last visited Jan. 15, 2019).

¹⁵ Florida Department of Health, *Prosecution Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html> (last visited Feb. 12, 2019).

¹⁶ Cases closed with no finding of probable cause are generally confidential and are not available through a public records request.

¹⁷ Section 20.43(3)(h), F.S.

Applications for Social Security disability benefits are filed at the claimant's local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant's medical sources.

If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant's alleged disability. The claimant is also contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information.

After the claim file is documented and a determination of medical eligibility is made, the DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due to the claimant.¹⁸

Public Record Exemption under Review

In 2014, the Legislature created a public record exemption for certain identification and location information of specified DOH personnel, current and former, and that of their families.¹⁹ The exemption applies to records of those personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities. The information held exempt²⁰ from public record requirements includes:

- The home addresses, telephone numbers, dates of birth, and photographs of DOH personnel;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by the children of DOH personnel.²¹

The 2014 public necessity statement²² for the exemption provides that:

The Legislature finds that the release of such identifying and location information might place these current or former personnel of the Department of Health and their family members in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions carried out by such personnel of the Department of Health, or whose business or professional practices have come under the scrutiny of investigators and inspectors of the Department of Health.²³

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2019, unless reenacted by the Legislature.

¹⁸ Social Security Disability Resource Center, *Applying for Disability in Florida*, <https://www.ssdrc.com/state-florida-fl-getting-started.html> (last visited Jan. 15, 2019).

¹⁹ Chapter 2014-72, L.O.F.; codified as s. 119.071(4)(d)2.o., F.S.

²⁰ There is a difference between records the Legislature designates 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, Aug. 1, 1985).

²¹ Section 119.071(4)(d)2.o., F.S.

²² Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

²³ Chapter 2014-72, L.O.F.

According to DOH, 2,711 current employees are covered by the exemption under review.²⁴ As of August 2018, DOH had received 210 public record requests for the exempt information.²⁵ The information was only released pursuant to a subpoena, court order, or if the subject of the requested records authorized the disclosure.²⁶ DOH has stated that the exemption is necessary to “protect the associated family and personnel whose duties include the inspection, investigation and prosecution of complaints filed against health care practitioners.”²⁷ DOH recommends that the exemption be reenacted without changes.²⁸

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of DOH whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities. It also maintains the public record exemption for the names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children and the names and locations of schools and day care facilities attended by their children.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for certain identification and location information of specified DOH personnel and their families.

Section 2 provides an effective date of October 1, 2019.

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.

²⁴ Open Government Sunset Review Questionnaire, DOH Response, Aug. 13, 2018, on file with the House Oversight, Transparency & Public Management Subcommittee.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.