

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1445 Pub. Rec./Dependent Eligibility Verification Services

SPONSOR(S): Giallombardo

TIED BILLS: HB 1443 **IDEN./SIM. BILLS:** SB 1662

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Facilities Subcommittee	15 Y, 0 N	Poche	Lloyd
2) Government Operations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The State Group Insurance Program (SGI Program) provides health care and supplemental benefits coverage to employees and retirees of state agencies and their eligible dependents. In 2017, the Division of State Group Insurance (DSGI), in the Department of Management Services (DMS), was directed to verify the eligibility of all dependents participating in the SGI Program. On July 1, 2020, DMS requested subscribers to provide documents as part of the verification process, including tax transcripts from the Internal Revenue Service, marriage licenses, birth certificates, adoption documents, and other documents. In September 2021, the DMS recommended that the exemption remain in effect with changes and adding other documents and information.

HB 1445 preserves the public records exemption for documents and information provided by a subscriber to the DSGI or its vendor for the purpose of verifying dependent eligibility for coverage under the SGI Program. The exemption was scheduled to sunset on October 2, 2022; the bill extends the exemption to October 2, 2027, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill adds to the list of documents and information that a subscriber may be expected to provide to DSGI or its vendor for dependent eligibility verification the following:

- For a spouse, documents showing joint ownership of property and attestation of the marriage;
- For a biological child, newborn grandchild, or adopted child, attestation of the subscriber-dependent relationship;
- For a foster child, any records showing the subscriber or spouse as the foster parent;
- For a child under guardianship, a copy of the court order naming the subscriber or spouse as guardian or custodian;
- For an unmarried child between age 26 and 30:
 - The child's birth or adoption certificate naming the subscriber or spouse as parent or a court order naming the subscriber or spouse as the child's guardian or custodian;
 - A completed Certification of Over-Age Dependent Eligibility Form; and
 - A document confirming the child's enrollment at a state university or Florida College System institution; or
 - A bill or statement in the child's name sent to an address in Florida within the past 60 days.
- For a disabled child age 26 or older:
 - The child's birth or adoption certificate naming the subscriber or spouse as parent, legal guardian, or legal custodian; and
 - A transcript of the subscriber's or spouse's most recently filed federal income tax return identifying the child as a dependent.

The bill may have an insignificant negative fiscal impact on the state, but no fiscal impact on local governments.

Article I, s. 24(c) of the Florida 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 public record exemption; thus, it requires a two-thirds vote for final passage.

The bill is linked to HB 1443, Dependent Eligibility Verification Services, so the act takes effect on the same date that HB 1443 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h1445a.FFS

DATE: 2/3/2022

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Group Insurance Program

Overview

The State Group Insurance Program (SGI Program)¹ is administered by the Division of State Group Insurance (DSGI) within the Department of Management Services (DMS). The SGI Program is an optional benefit for state employees employed by state agencies, state universities, the court system, and the Legislature. The SGI Program administers health, life, dental, vision, disability, and other supplemental insurance benefits.

State Health Insurance Plans

The SGI Program provides four options for employees and retirees to choose as their health plan:

- The standard Preferred Provider Organization (PPO) plan, administered by Florida Blue.
- The high deductible PPO plan, administered by Florida Blue.
- The standard health maintenance organization (HMO) services.²
- The high deductible HMO.

Pharmacy Benefit

The SGI Program also has a pharmacy benefit for members of the plan. The SGI Program covers all federal legend drugs (open formulary) for covered medical conditions and employs very limited utilization review and clinical review for traditional or specialty prescription drugs. The DMS contracts with CVS/Caremark, a pharmacy benefits manager, to administer the Prescription Drug Plan.³

Eligible Employees

The SGI Program is open to the following individuals:

- All state officers;
- All state employees paid from “salaries and benefits” appropriation categories, regardless of the number of hours worked;
- Retired state officers and state employees;
- Surviving spouses of deceased state officers and state employees;
- Certain terminated state officers and state employees; and
- Certain state employees paid from “other-personal-services” (OPS) appropriation categories.

For OPS employees to be eligible to participate in the health insurance program, the employee must:

- Be reasonably expected to work an average of at least 30 hours per week; and
- Have worked an average of at least 30 hours per week during the person’s measurement period (which is 12 consecutive months⁴ of employment).⁵

¹ S. 110.123, F.S.

² These are provided by Aetna, AvMed, Capital Health Plan, and UnitedHealthcare. One of these HMO plans is offered in each county in the State of Florida.

³ myBenefits, Prescription Drug Plan, https://www.mybenefits.myflorida.com/health/health_insurance_plans/prescription_drug_plan.

⁴ S. 110.123(13)(d), F.S.

⁵ S. 110.123(2)(c)2., F.S.

Dependent Eligibility

The SGI Program covers employees and retirees of state agencies and their eligible dependents. An eligible dependent is defined as:

- A current spouse to whom the member is legally married.
- A biological child, child with a qualified medical support order, legally adopted child, or child placed in the home for the purpose of adoption in accordance with applicable state and federal laws, through the end of the calendar year in which he/she turns age 26.
- A stepchild, for as long as the member remains legally married to the child's parent, through the end of the calendar year in which he/she turns age 26.
- A foster child placed in the member's home by the Department of Children and Families Foster Care Program or the foster care program of a licensed private agency, through the end of the calendar year in which he/she turns age 26.
- A child for whom the member has legal guardianship through the end of the calendar year in which he/she turns age 26.
- An over-age dependent, after the end of the calendar year in which he/she turns 26, through the end of the calendar year in which he/she turns 30 – if he/she is unmarried, has no dependents of his/her own, is a resident of Florida or a full- or part-time student, and has no other health insurance.
- An over-age dependent with a disability.
- A newborn dependent of a member's covered child for up to 18 months of age as long as the newborn's parent remains covered.
- A child of law enforcement, probation, or correctional officers who were killed in the line of duty, who are attending a college or university beyond their 18th birthday.
- A surviving spouse and dependents.

Dependents may be added as covered dependents during the open enrollment period each year or in the event of a qualifying status change. Minimal information is collected by the DMS to determine eligibility.

Dependent Eligibility Verification

During the 2017 Legislative Session, the DSGI was directed to contract with a vendor to verify the eligibility of all dependents participating in the SGI Plan. The DSGI provided notice to all subscribers and on July 1, 2020, via the People First Service Center, began requesting subscribers to provide documents as part of the dependent eligibility verification process. The documents include tax transcripts from the Internal Revenue Service, marriage licenses, birth certificates, adoption documents, and other documents.⁶

Enrollment

For FY 2020-21, the final enrollment reflected 175,046 subscribers and 187,244 dependents, totaling 362,290 covered lives.⁷ Approximately 47.1% of subscribers are enrolled in PPO plans, 52.3% are enrolled in HMO plans, and 0.6% are enrolled in a Medicare Advantage Prescription Drug plan.⁸ Subscriber enrollment in individual coverage was 47.8%, and 52.2% were enrolled in family coverage, which had an average size of 3.05 members.⁹

Open Government Sunset Review of the Public Records Exemption for a Dependent Eligibility Verification

In September 2021, the Senate Governmental Oversight and Accountability Committee and the

⁶ S. 110.12301(2)(b), F.S.

⁷ State Employee's Group Health Self-Insurance Trust Fund, *Report on Financial Outlook, For the Fiscal Years Ending June 30, 2021 through June 30, 2026*, <http://edr.state.fl.us/content/conferences/healthinsurance/HealthInsuranceOutlook.pdf>.

⁸ *Id.* at pg. 1.

⁹ *Id.*

House Government Operations Subcommittee spoke with representatives of the DMS regarding the need to maintain the exemption for records collected for the purposes of dependent eligibility verification services conducted for the SGI Program. Additionally, an Open Government Sunset Review Questionnaire was provided to the DMS. The DMS recommended that the exemption remain in effect with changes to remove obsolete language and to include specified documentation that is routinely collected under the “catch-all” provision¹⁰- “any other information.”

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.¹² Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.¹³ The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.¹⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.¹⁵ The Public Records Act does not apply to legislative or judicial records. Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature. Section 119.011(12), F.S., defines “public records” to include:

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.¹⁶

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁷ A violation of the Public Records Act may result in civil or criminal liability.¹⁸

Only the Legislature may create an exemption to public records requirements.¹⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.²⁰ Further, the exemption must be no broader than necessary to accomplish the stated

¹⁰ S. 110.12301(2)(b)5., F.S.

¹¹ Art. I, s. 24(a), Fla. Const.

¹² Id.

¹³ Public records laws are found throughout the Florida Statutes.

¹⁴ S. 119.01(1), F.S.

¹⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

¹⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁷ S. 119.07(1)(a), F.S.

¹⁸ S. 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁹ Art. I, s. 24(c), Fla. Const.

²⁰ Id.

purpose of the law. A bill enacting an exemption may not contain other substantive provisions²¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.²²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” 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 confidential.²³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.²⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.²⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,²⁶ with specified exceptions.²⁷ The Act requires the repeal of such exemption 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 or repeal the sunset date. In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.²⁸

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁹ An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³⁰
- 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;³¹ or
- It protects trade or business secrets.³²

The Act also requires specified questions to be considered during the review process.³³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of

²¹ The bill may, however, contain multiple exemptions that relate to one subject.

²² *Supra*, FN 9.

²³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004)

²⁴ *Id.*

²⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

²⁶ S. 119.15, F.S.; Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

²⁷ S. 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²⁸ S. 119.15(3), F.S.

²⁹ S. 119.15(6)(b), F.S.

³⁰ S. 119.15(6)(b)1., F.S.

³¹ S. 119.15(6)(b)2., F.S.

³² S. 119.15(6)(b)3., F.S.

³³ S. 119.15(6)(a), F.S.; The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

reenacting the exemption. If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.³⁵

Effect of Proposed Changes

HB 1445 adds several documents to the list of those that subscribers to the SGI Program must provide to DMS or its contractor to determine whether certain dependents of subscribers are eligible for coverage under the SGI Program. The documents added to s. 110.12301(2)(a), F.S., are:

- Documents showing joint ownership of property and an attestation of the marriage by sworn affidavit to prove a spouse's eligibility;
- An attestation of the subscriber-dependent relationship by sworn affidavit to prove a biological child's, newborn grandchild's, or adopted child's eligibility;
- A copy of any records showing the subscriber or his or her spouse as the foster parent to prove a foster child's eligibility;
- A copy of the court order naming the subscriber or his or her spouse as the child's guardian or custodian to prove eligibility of a child under guardianship;
- To prove the eligibility of an unmarried child between age 26 and 30:
 - A copy of the child's birth or adoption certificate naming the subscriber or his or her spouse as the child's parent or a court order naming the subscriber or his or her spouse as the child's guardian or custodian;
 - A completed Certification of Over-Age Dependent Eligibility Form; and
 - A document confirming the child's enrollment at a state university or Florida College System institution (including the child's full name, the name of the institution, and the school term during which the child was enrolled); or
 - A bill or statement in the child's name sent to his or her address in Florida within the past 60 days.
- To prove the eligibility of a disabled child age 26 or older:
 - A copy of the child's birth or adoption certificate naming the subscriber or his or her spouse as the child's parent, legal guardian, or legal custodian; and
 - A transcript of the subscriber's or subscriber's spouse's most recently filed federal income tax return that includes the child's name and last four digit of the child's Social Security number and identifies the child as a dependent.

The bill preserves the public records exemption for documents and information provided by a subscriber to the DSGI or its vendor for the purpose of verifying dependent eligibility for coverage under the SGI Program. The exemption was scheduled to sunset on October 2, 2022; the bill extends the exemption to October 2, 2027. The bill also provides a public necessity statement as required by art. I, s. 24(c) of the Florida Constitution. The public necessity statement provides that:

- Records collected for the purpose of dependent eligibility verification services conducted for the state group insurance program and held by DMS be made confidential and exempt from public records requirements under law.
- The existing public records exemption is expanded to include additional records that employee may submit under additional specified eligibility categories as part of the existing dependent eligibility verification process, including records relating to guardianship of a child, the fostering of a child, unmarried adult children, and disabled adult children, which include court orders, foster care records, birth certificates, adoption certificates, student academic and financial records, medical records, and transcripts of filed tax returns.
- Like other records collected and held by DMS for dependent eligibility verification, these records

³⁴ Supra, FN 9.

³⁵ S. 119.15(7), F.S.

should be protected from public disclosure, as they contain sensitive and personal information that may deter employees from producing them in the absence of the same protections offered in connection with the current eligibility categories.

- If the public had unfettered access to the information contained within these records, employees and their family members could be placed at increased risk of identity theft and fraud.
- The Legislature further recognizes that this exemption is narrowly tailored and applies only to those records collected for the purpose of verifying eligible dependents for enrollment in the state group insurance program.

The exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2027, unless the Legislature reviews and reenacts the exemption by that date.

The bill is linked to HB 1443, Dependent Eligibility Verification Services, so the act takes effect on the same date that HB 1443 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 110.12301, F.S., relating to competitive procurement of postpayment claims review services and dependent eligibility verification services; public records exemption.

Section 2: Provides a public necessity statement as required by the Florida Constitution.

Section 3: Provides an effective date of the same date that HB 1443 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could have an insignificant negative fiscal impact on DMS – department staff responsible for complying with public record requests may require training related to the newly created public record exemption. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the department.

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. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida 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 public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands an existing public record exemption for the documents and information subscriber's submit for purpose of verifying the eligibility of certain dependents for health coverage under the SGI Program, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require additional rulemaking authority to implement.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES