

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** Government Operations Subcommittee, 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	16 Y, 0 N, As CS	Landry	Toliver
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Article I, section 24(a) of the Florida Constitution establishes the state's government records access policy, guaranteeing each person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. However, the Legislature may provide a public records exemption by general law if the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption ("public necessity statement"), and is no broader than necessary to meet its public purpose.

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.

The bill expands the public records exemption for such documents and information. The current 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 may have an insignificant negative fiscal impact on the state, but no fiscal impact on local governments.

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.

**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.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### **Public Records Law**

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for exemption from public records requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>1</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>3</sup> An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.<sup>4</sup>

Pursuant to s. 119.15(3), F.S., a new public records exemption or substantial amendment of an existing public records exemption is repealed on October 2 of the fifth year following enactment, unless the Legislature reenacts the exemption.

##### **State Group Insurance Program**

###### *Overview*

The State Group Insurance Program (SGI Program)<sup>5</sup> 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.

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<sup>1</sup> Art. I, s. 24(c), FLA. CONST.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> S. 110.123, F.S.

- The standard health maintenance organization (HMO) services.<sup>6</sup>
- 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.<sup>7</sup>

### *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 months<sup>8</sup> of employment).<sup>9</sup>

### *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.

<sup>6</sup> 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.

<sup>7</sup> myBenefits, Prescription Drug Plan, [https://www.mybenefits.myflorida.com/health/health\\_insurance\\_plans/prescription\\_drug\\_plan](https://www.mybenefits.myflorida.com/health/health_insurance_plans/prescription_drug_plan) (last visited February 6, 2022).

<sup>8</sup> S. 110.123(13)(d), F.S.

<sup>9</sup> S. 110.123(2)(c)2., F.S.

- 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.<sup>10</sup>

### *Enrollment*

For FY 2020-21, the final enrollment reflected 175,046 subscribers and 187,244 dependents, totaling 362,290 covered lives.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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

In September 2021, the House Government Operations Subcommittee and the Senate Governmental Oversight and Accountability Committee 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” provision<sup>14</sup> - “any other information.”

### HB 1443

HB 1443, to which this bill is linked, permits DMS, instead of DSGI, to provide or contract for dependent eligibility verification services for the SGI Program on an ongoing basis. HB 1443 makes conforming changes to convert the former audit project into an ongoing audit program for DMS. Also, all documentation submitted by subscribers for the ongoing audit must be retained according to the applicable records retention schedule, which is five fiscal years from the date of the audit report.

### **Effect of Proposed Changes**

The bill expands 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:

<sup>10</sup> S. 110.12301(2)(b), F.S.

<sup>11</sup> 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> (last visited February 6, 2022).

<sup>12</sup> *Id.* at pg. 1.

<sup>13</sup> *Id.*

<sup>14</sup> S. 110.12301(2)(b)5., F.S.

- 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 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 as 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**

On February 8, 2022, the Government Operations Subcommittee adopted an amendment and reported the bill favorable as a committee substitute. The amendment removed several additions to the current list of documents and information that a subscriber may be expected to provide to DSGI or its vendor for dependent eligibility verification.

The analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.