

The Florida Senate
HOUSE MESSAGE SUMMARY

Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 7002

INTRODUCER: Health Policy Committee

SUBJECT: OGSR/Information Relating to Medical Marijuana Held by the Department of Health

DATE: February 2, 2022

I. Amendments Contained in Message:

House Amendment – 447527 (body with title)

II. Summary of Amendments Contained in Message:

House Amendment 447527 is a strike-all that revises the existing public record exemption relating to the Department of Health’s (DOH) medical marijuana program. The amendment goes beyond reenacting the exemption and makes revisions unrelated to saving the exemption from repeal. These revisions are not found in SB 7002, and they are only statutory clean-up revisions that do not materially alter the effect of the exemption. See below for details.

Information “Held by the Department”

Current law in s. 381.987(1), F.S., contains a list of information relating to the DOH’s medical marijuana program which is made confidential and exempt from public record. That list is found in paragraphs (a), (b), (c), and (d) of that subsection.

The language in paragraphs (a) and (c) specifies that the exemption applies to information “held by the department” (in lines 21 and 30 of SB 7002), while the language in paragraphs (b) and (d) does not specify that the exemption applies to information “held by the department.”

House Amendment 447527 strikes the phrase “held by the department” from paragraphs (a) and (c) and relocates that phrase into the introductory, or lead-in, language for subsection (1), thereby using the subsection’s lead-in to apply the phrase “held by the department” to all four paragraphs of the subsection. (See lines 10, 14, and 23 of the House amendment.)

The amendment’s revised language may be more stylistically elegant than current law but has no material effect on the public record exemption. When viewed as a whole, the title for the overall section of statute (s. 381.987, F.S.) is “Public records exemption for personal identifying information relating to medical marijuana *held by the department*” (emphasis added), indicating that the provisions of subsection (1), and the other subsections, already apply the public record exemption to information held by the DOH, despite the phrase “held by the department” not appearing in paragraphs (b) and (d) of subsection (1).

Additionally, in the 2017 law that applied the public record exemption to the current medical marijuana program, the Legislature specified in the public necessity statement that personal identifying information of patients, caregivers, and physicians, including the name, residential address, date of birth, photograph, telephone number, government-issued identification card, Drug Enforcement Administration number, and other personal identifying information collected for purposes of issuing a medical marijuana use registry identification card “*held by the Department of Health,*” be made confidential and exempt from public records (emphasis added), thereby indicating legislative intent for the exemption to apply to information held by the DOH.¹

“Including, But Not Limited To”

Paragraph (a) of s. 381.987(1), F.S., currently applies the exemption to: “A patient’s or caregiver’s personal identifying information held by the department in the medical marijuana use registry established under s. 381.986, *including, but not limited to, the patient’s or caregiver’s name, address, date of birth, photograph, and telephone number*” (emphasis added).

Paragraph (c) of that subsection currently applies the exemption to: “All personal identifying information pertaining to the physician certification for marijuana and the dispensing thereof held by the department, *including, but not limited to, information related to the patient’s diagnosis, exception requests to the daily dose amount limit, and the qualified patient’s experience related to the medical use of marijuana*” (emphasis added).

House Amendment 447527 strikes the italicized language (emphasized above) from paragraphs (a) and (c), respectively, thereby eliminating the “including, but not limited to” language from both paragraphs. However, that revision does not limit the extent to which the DOH may apply the exemption. In paragraphs (a) and (c), the exemption is limited to personal identifying information pertaining to a patient, a caregiver, or a physician’s certification for marijuana and the dispensing thereof. That limitation applies with or without the language stricken under the amendment, and the DOH decides the extent to which information in its possession qualifies for the exemption, regardless of the “including, but not limited to” language. The DOH has no more discretion to protect additional records under SB 7002 than it does under the House amendment.

It is relevant to note that the 2017 Legislature found it to be a public necessity for each of the items specified in the italicized language (above) to be confidential and exempt from public record. Aside from the “public necessity” language referenced earlier in this summary, which specifies items currently found in paragraphs (a), (b), and (d), the 2017 Legislature also found it to be a public necessity to make confidential and exempt all personal identifying information, *including but not limited to,* the items currently specified in paragraph (c).²

House Amendment 447527 strikes all of the specifically protected items found in paragraphs (a) and (c) from the statutory exemption language, despite the 2017 Legislature’s findings about public necessity. Even so, the DOH must still keep those items confidential and exempt under the amendment if it determines such information qualifies as personal identifying information.

¹ Chapter 2017-231, sec. 2, Laws of Florida

² *Id.*