

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7026

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Dependent Eligibility Verification Services

DATE: January 25, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Ponder</u>	<u>McVaney</u>		GO submitted as Comm. Bill/Fav
1. <u>Ponder</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7026 amends s. 110.12301, F.S., to save from repeal the current exemption from public records disclosure for certain information submitted to the Department of Management Services (DMS) for purposes of dependent eligibility verification for the State Group Insurance Program (SGI Program).

The bill also revises s. 110.12301, F.S., to provide with specificity the documents that may be collected by the DMS to verify dependent eligibility and removes a current provision that permits the collection of “any other information” for such purposes. The bill narrows the application of the exemption by removing the catch all provision and specifically enumerating the information that the DMS currently holds as exempt under the catch all provision.

The original public necessity statement for the bill states that it is in the best interest of the public that records collected for purposes of dependent eligibility verification services conducted for the SGI Program be confidential and exempt. Employees enrolled in the SGI Program are required to produce sensitive and personal information to verify their eligibility and that of their dependent(s). Therefore, protecting such information helps protect state employees and their families from criminal or inappropriate use of their personal information.

Section 110.12301, F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2022, unless reviewed and saved from the repeal through reenactment by the Legislature. This bill removes the scheduled repeal of the exemption.

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

This bill takes effect on October 1, 2022.

II. Present Situation:

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.¹ 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.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ 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.⁴

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.

The Public Records Act does not apply to legislative or judicial records.⁵ 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 connections with the transaction of official business by any agency.

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.”⁶

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

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*.¹³ 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.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

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,¹⁶ with specified exceptions.¹⁷ 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.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.¹⁹ 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:

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 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.

¹⁷ Section 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.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- 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;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of 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.²⁴ 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.²⁵

State Group Insurance Program

Overview

The State Group Insurance Program (SGI Program) is created by s. 110.123, F.S., and 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.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ Section 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

- The standard health maintenance organization (HMO) services.²⁶
- 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.²⁷

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 months²⁸ of employment).²⁹

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.

²⁶ 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.

²⁷ myBenefits, Prescription Drug Plan, https://www.mybenefits.myflorida.com/health/health_insurance_plans/prescription_drug_plan (last viewed January 6, 2022)

²⁸ Section 110.123(13)(d), F.S.

²⁹ Section 110.123(2)(c)2., F.S.

- 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.³⁰

Enrollment

For FY 2020-21, the final enrollment reflected 175,046 subscribers and 187,244 dependents, totaling 362,290 covered lives.³¹ 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.³² 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.³³

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

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

³⁰ See s. 110.12301(2)(b), F.S.

³¹ 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 January 7, 2022).

³² *Id.* at p. 1.

³³ *Id.*

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” provision³⁴- “any other information.”

III. Effect of Proposed Changes:

Section 1 amends s. 110.12301, F.S., to designate the Department of Management Services (DMS) rather than the Division of State Group Insurance, as the entity that contracts for dependent eligibility verification services for the State Group Insurance Program. This section is amended to permit the department, in addition to the contractor as provided for in current law, to require certain information from subscribers for dependent eligibility verification.

The bill permits subscribers to submit the following attestations by sworn affidavit consistent with s. 92.50, F.S., (attestation), if specified information cannot be produced:

- An attestation of marriage to prove a spouse’s eligibility, if a joint federal income tax return or government-issued marriage certificate cannot be produced.³⁵
- An attestation of the subscriber-dependent relationship to prove a biological child or a newborn grandchild’s eligibility, if a birth certificate cannot be produced.
- An attestation of the subscriber-dependent relationship to prove an adopted child’s eligibility, if an adoption certificate or an adoption placement agreement and petition for adoption cannot be produced.

The bill further amends s. 110.12301(2), F.S., as follows:

To Prove Eligibility of:	Documentation Required:
A child under a guardianship	A copy of the court order naming the subscriber or the subscriber’s spouse as the child’s legal guardian or custodian.
A foster child	Records showing the subscriber or the subscriber’s spouse as the dependent’s foster parent
An unmarried child age 26 to 30	<ul style="list-style-type: none"> • A copy of the child’s government-issued birth certificate or adoption certificate naming the subscriber or the subscriber’s spouse as the child’s parent, or a copy of the court order naming the subscriber or the subscriber’s spouse as the child’s legal guardian or custodian; • A copy of the Certification of Over-Age Dependent Eligibility Form; and

³⁴ Section 110.12301(2)(b)5., F.S.

³⁵ Section 110.12301(2)(a)1.a., F.S., requires for a marriage of less than 12 months, submission of government-issued marriage certificate, if a joint federal income tax return has not been filed. Section 110.12301(2)(a) and b., F.S., require submission of a

	<ul style="list-style-type: none"> • A document confirming the child’s current enrollment as a student, including the name of the child, the name of the school, and the school term; or a bill or statement in the child’s name which is dated within the past 60 days and is mailed to the child at a Florida address.
<p>A disabled child age 26 or older</p>	<ul style="list-style-type: none"> • A copy of the child’s government-issued birth certificate or adoption certificate naming the subscriber or the subscriber’s spouse as the child’s parent, or a copy of the court order naming the subscriber or the subscriber’s spouse as the child’s legal guardian or custodian; and • A copy of the subscriber’s most recent federal income tax return listing the child’s name and the last four digits of the child’s social security number and identifying the child as the subscriber’s dependent for tax purposes.

The section revises the provision regarding foreign-born subscribers, to require a sworn affidavit consistent with s. 92.50, F.S., attesting to eligibility requirements be produced if such subscribers are unable to obtain the necessary documentation with the specified time period of producing verification documentation.³⁶

The section amends the document retention provision in s. 110.12301(2)(f), F.S., to replace “contractor” with the DMS and requires the DMS to retain all documentation obtained to conduct the dependent eligibility verification services in accordance with the applicable records retention schedule.

The section deletes the scheduled repeal of the exemption relating to documentation held by the DMS (or its agent) for the purposes of dependent eligibility verification services.

Section 2 provides that the bill takes effect on October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities

³⁶ Current law permits foreign-born subscribers to execute a signed affidavit attesting to eligibility requirements if they are unable to obtain the necessary documentation within the specified time period of producing verification documentation.

have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill revises the type of records that the DMS or a contractor providing dependent eligibility verification services may require from a subscriber. These “new” records covered by the exemption, however, are, as a matter of current and historical practice, routinely collected by the DMS for dependent eligibility verification under the authority of s. 110.12301(2)(b)(5), F.S., which allows the DMS to request “any other information.” The bill removes this catch all provision and specifically enumerates the records that subscribers are required to submit for dependent eligibility verification. Thus, the revisions narrow the application of the public records exemption to the documentation specified by law. Because this bill continues a current public records exemption with revisions that narrow its application, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect subscriber’s sensitive and personal information submitted to the DMS for purposes of dependent eligibility verification. This bill exempts only specified information related to documenting or proving a relationship with a dependent from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with agency making redactions in response to a public records request.

C. Government Sector Impact:

Governmental agencies will continue to incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 110.12301 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.