



The Florida Senate

Interim Project Summary 2001-038

August 2000

Committee on Education

Senator Anna Cowin, Chairman

OPEN GOVERNMENT SUNSET REVIEW: S. 240.2996(2),(3)&(4), F.S.

SUMMARY

The exemptions in s. 240.2996(2),(3), & (4), F.S., are subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2001, unless reviewed and saved from repeal through reenactment by the Legislature.

BACKGROUND

Section 119.15, F.S., the "Open Government Sunset Review Act of 1995," establishes a review and repeal process for exemptions to public records or meetings requirements. In the fifth year after enactment of a new exemption, or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd, unless the Legislature acts to reenact the exemption. Section 119.15(3)(a), F.S., requires a law that enacts a new exemption or substantially amends a new exemption to state that the exemption is repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the year before the repeal of an exemption, the Legislature's Division of Statutory Revision must certify to the President of the Senate and the Speaker of the House of Representatives each exemption scheduled for repeal the following year which meets the statutory criteria of an exemption. Any exemption that is not identified and certified is not subject to legislative review and repeal under s. 119.15, F.S. If the division fails to certify an exemption that it subsequently determines should have been certified, it

must include the exemption in the following year's certification.

Section 119.15(2), F.S., states that an exemption is to be maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

Further, s. 119.15(4)(a), F.S., requires, as part of the review process, the consideration of the following specific questions:

- (a) What specific records or meetings are affected by the exemption?
- (b) Whom does the exemption uniquely affect, as opposed to the general public?
- (c) What is the identifiable public purpose or goal of the exemption?
- (d) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Additionally, under s. 119.15(4)(b), F.S., an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes 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:

- (a) Does the exemption allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption?
- (b) Does the exemption protect information of a sensitive personal nature concerning individuals, the

release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals? However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted. Or,

(c) Does the exemption protect information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace?

Under s. 119.15(4)(e), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid reenactment.

University health services support organizations-

The law allows each state university to establish university health services support organizations to serve as the corporate entities through which public colleges of medicine may participate as partners in integrated health care delivery systems for the benefit of public academic health centers.¹ Section 240.2996, F.S., provides that all meetings of the organization's governing board and all organizational records are open and available to the public unless made confidential and exempt by law, in accordance with statutory and constitutional requirements. The law provides for the following exemptions from the public records and meetings requirements.²

The following university health services support organization's records and information are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

¹ S. 240.2995, F.S., and chapter 96-171, L.O.F. Chapter 2000-303, L.O.F.

² These exemptions do not apply if the organization's governing board votes to sell, lease, or transfer all or any substantial part of the facilities or property of the organization to a nonpublic entity. Also, the law does not preclude discovery of records or information that are otherwise discoverable under the Florida Rules of Civil Procedure or any statutory provision allowing discovery or preclude disclosure in civil actions.

- Contracts for managed care arrangements under which the university health services support organization provides health care services, including preferred provider organization contracts, health maintenance organization contracts, alliance network arrangements, and exclusive provider organization contracts, and any documents directly relating to the negotiation, performance, and implementation of any such contracts for managed care arrangements or alliance network arrangements. However, the law requires the organization to make available upon request the following information:
- The title and general description of a contract for managed care arrangements; the names of the contracting parties; and the duration of the contract. The exemption for contracts for managed care arrangements is limited in that the contracts become public 2 years after termination or completion of the contract term. Portions of the contract containing trade secrets remain confidential and exempt.
- A university health services support organization's plans for marketing its services, which services are or may reasonably be expected by the organization's governing board to be provided by competitors of the organization or its affiliated providers. However, documents that are submitted to the organization's governing board as part of the board's approval of the organization's budget, and the budget itself, are not confidential and exempt.
- Trade secrets, as defined in s. 688.002, including reimbursement methodologies and rates.
- The records of the peer review panels, committees, governing board, and agents of the university health services support organization which relate solely to the evaluation of health care services and professional credentials of health care providers and physicians employed by or providing services under contract to the university health services support organization. This exemption is not be construed to impair any otherwise established rights of an individual health care provider to inspect documents concerning the determination of such provider's professional credentials.
- There is an exemption from the public meetings requirements for any portion of a governing board or peer review panel or committee meeting during which a confidential and exempt contract, document, record, marketing plan, or trade secret is discussed.
- As well, there is an exemption from the public records requirements for those portions of any

public record (e.g., tape recording, minutes, or notes), generated during portions of closed meetings which contain confidential and exempt information relating to contracts, documents, records, marketing plans, or trade secrets.

The law allows a person to petition the court for an order to release those portions of any confidential and exempt public record (e.g., tape recording, minutes, or notes) generated during that portion of a closed governing board meeting. The university health services support organization may petition the court to continue the confidentiality of a public record upon a showing of good cause.

The provisions in subsections (3) and (4) have not been amended since their creation in 1996. Two measures passed by the 2000 Legislature amended paragraph (a) of subsection (2) to add a definition of managed care, which is the same definition that is currently incorporated by cross-reference to s. 408.701, F.S. The law (s. 408.701, F.S.) was repealed by both bills. (See chapter 2000-256, L.O.F., and chapter 2000-296, L.O.F.)

METHODOLOGY

The project involved reviewing relevant case law and other materials, as well as the provisions in s. 119.15, F.S., and conducting a survey of the Board of Regents and state universities with university health services support organizations. Follow-up interviews were conducted, as needed, with respondents as well as experts on public records law.

FINDINGS

The exemptions for university health services support organizations were created to provide a mechanism for the public colleges of medicine to participate in integrated health care delivery organizations. The partnerships were needed to expand physician training beyond hospitals and into the community settings in which health care is increasingly being provided, to maintain the patient base necessary for medical education, and to enable medical faculty to continue to generate the clinical income from which the medical schools derive the majority of their operating budgets.

Since the passage of the enabling legislation, the role of private and public academic health centers in managed care has been extensively discussed in the literature. The experiences of Florida's academic health centers in managed care have also been discussed. The University of Florida and the University of South

Florida currently have public academic health centers. The University of South Florida Health Sciences Center includes the College of Medicine, the College of Nursing, and the College of Public Health, as well as affiliated hospitals and clinics. The Health Science Center for the University of Florida consists of the six health related colleges of the university. It is affiliated with Shands at the University of Florida and Shands Jacksonville and their affiliated hospitals. The Health Science Center also contracts with the Veterans Affairs Medical Center in Gainesville for various services.

The Board of Regents staff reports that two universities have established the following approved health services support organizations.

- The University of South Florida (USF) Health Services Support Organization Inc.
- The University of South (USF) Physicians Group, Inc.³
- The University of Florida Health Services, Inc.
- The University of Florida Jacksonville Healthcare, Inc.

Currently, the only existing managed care contracts associated with a university health services support organization are through the University of Florida.⁴ The university has approximately 74 contracts for managed care arrangements on behalf of the University of Florida Jacksonville Healthcare, Inc. In 1999, the organization operated 30 primary and specialty care clinics.

The only other managed care arrangement involved the University of South Florida Health Services Support Organization, Inc. In 1997, the organization entered into an agreement with FPMBH Clinical Services, Ltd., and U.B.H. Holdings, L.C., to develop and market a managed care behavioral health delivery system in 4 counties, in conjunction with the USF Department of Psychiatry. The contract was terminated in the summer of 1998. There are no current contracts for this organization or the University of Florida Health Services, Inc., although both organizations have retained a corporate structure.

³ This organization is currently inactive with the Department of State. On July 21, 2000, the Board of Regents approved the dissolution of the corporate entity and the plan for distribution of its assets.

⁴ Response to Senate interim project survey.

The goal of the exemptions, according to respondents for the University of Florida and the University of South Florida, is to enable the organizations to effectively carry out the statutory function of entering into managed care arrangements for the benefit of the state university academic health centers. The exemption allows the public university health centers to fulfill the missions of educating students, providing medical care to the state’s residents, and conducting medical research through competition on an equal basis with other medical professionals with access to patient populations and clinical revenue derived from contracts with managed care organizations and insurers.

The response from the Board of Regents noted that the traditional academic health center patient population is steadily being eroded as more individuals enter managed care systems. In some teaching hospitals, overall admissions of certain patients for specific procedures has declined so dramatically that some undergraduate and graduate (residency) medical education and training programs are compromised. Further, managed care has placed pressure on the quality of medical education programs by reducing the number of hospital admissions and the lengths of stay. As well, the response noted that managed care organizations are responsible for a decline in the professional fees collected by medical school faculty for the provision of patient care services.

The respondents for the University of Florida and the University of South Florida, as well as the Board of Regents, recommend reenacting the exemptions with no changes. However, the First Amendment Foundation noted that the existing provisions in s. 240.2996, F.S., related to exemptions for market plans, suffer from a lack of specificity similar to that cited in the *Daytona Beach News Journal’s* successful challenge to a closed meeting agreement between Halifax Hospital Medical Center and the Southeast Volusia Hospital District. The Foundation recommends

amending these provisions to reflect the subsequent changes made to s. 395.3035, F.S., in response to *Halifax*. See *Halifax Hospital Medical Center v. News Journal Corporation*, 724 So.2d 567, (Fla. 1999).

RECOMMENDATIONS

Section 240.2996, F.S., provides specific public records and meetings exemptions for university health services support organizations. Although the provision allowing universities to establish university health services support organizations has not been used frequently, there are instances where it is useful and the continuation of the exemptions is supported by the University of Florida and the University of South Florida, as well as the Board of Regents. While the current exemptions serve identifiable public purposes, the exemptions are broader than necessary. It is recommended that the exemptions be reenacted with modifications.

Chapter 2000-321, L.O.F., repeals ss. 240.2995 and 240.2996, F.S., effective January 7, 2003. Chapter 2000-303, L.O.F., related to the creation of the new College of Medicine, contemplated the creation of not-for-profit corporations to seek affiliation agreements with health care systems and organizations, local hospitals, medical schools, and military health care facilities in specified communities.

Given the changes in the current health care industry, it is recommended that ss. 240.2995 and 2240.2996, F.S., be reviewed prior to their repeal by the Committees on Budget, Education, and Governmental Oversight and Productivity, to determine if changes are needed to the structure of these organizations and the related public records and meetings exemptions.

COMMITTEE(S) INVOLVED IN REPORT (Contact first committee for more information.)

Committee on Education, 404 South Monroe Street, Tallahassee, FL 32399-1100, (850) 487-5213 SunCom 277-5213

MEMBER OVERSIGHT

Senator Jim King