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Committee on Health Care

Senator Durell Peaden, Jr., Chair

OPEN GOVERNMENT SUNSET REVIEW S. 119.07(6)(CC), F.S., PERSONAL HEALTH INFORMATION

SUMMARY

Section 119.07(6)(cc), F.S. (2004), makes all personal identifying information; bank account numbers; and debit, charge, and credit card numbers contained in records *relating to an individual's personal health or eligibility for health related services made or received* by the Department of Health (DOH) confidential and exempt from the Public Records Law. Such information must be disclosed under the following circumstances: with the express written consent of the individual or the individual's legal representative; in a medical emergency, but only to the extent necessary to protect the health or life of the individual; by court order upon a showing of good cause; or to a health research entity, if the entity seeks the records or data pursuant to a research protocol, and enters into a purchase and data-use agreement with DOH. Section 119.07(6)(cc), F.S. (2004), is subject to review under the Open Government Sunset Review Act of 1995 (2004) and shall stand repealed on October 2, 2006, unless saved from repeal through reenactment by the Legislature.

Based on staff's review of the exemption under the criteria of the Open Government Sunset Review Act of 1995 (2004), staff recommends that the exemption contained in s. 119.07(6)(cc), F.S. (2004), be preserved. Staff also recommends that the exemption under review be amended:

- To exclude bank account numbers; and debit, charge, and credit card numbers, because this information as maintained by DOH or its agents is already exempt under other provisions of Florida law; and
- To clarify that the information exempt under the Public Records Law is personal identifying information contained in records relating to an

individual's personal health or eligibility for health related services *held* by DOH rather than *made or received* by DOH.

BACKGROUND

Constitutional Access to Public Records and Meetings

Florida has a history of providing public access to the records and meetings of governmental and other public entities. The tradition began in 1909 with the enactment of a law that guaranteed access to the records of public agencies.¹ Over the following decades, a significant body of statutory and judicial law developed that greatly enhanced the original law. The state's Public Records Act, in ch. 119, F.S., and the public meetings law, in ch. 286, F.S., were first enacted in 1967.² These statutes have been amended numerous times since their enactment. In November 1992, the public affirmed the tradition of government-in-the-sunshine by enacting a constitutional amendment, which guaranteed and expanded the practice.

Article I, s. 24 of the State Constitution provides every person with the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. The section specifically includes the legislative, executive and judicial branches of government and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissions or entities created pursuant to law or the State Constitution. All meetings of any collegial public body must be open and noticed to the public.

¹ Section 1, ch. 5945, 1909; RGS 424; CGL 490.

² Chapters 67-125 and 67-356, L.O.F.

The term “public records” has been defined by the Legislature in s. 119.011(11), F.S., 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.

This definition of public records has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate or formalize knowledge.³ Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.⁴

The State Constitution authorizes exemptions to the open government requirements and establishes the means by which these exemptions are to be established. Under Art. I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records and meetings. A law enacting an exemption:

- Must state with specificity the public necessity justifying the exemption;
- Must be no broader than necessary to accomplish the stated purpose of the law;
- Must relate to one subject;
- Must contain only exemptions to public records or meetings requirements; and
- May contain provisions governing enforcement.

Exemptions to public records and meetings requirements are strictly construed because the general purpose of open records and meetings requirements is to allow Florida’s citizens to discover the actions of their government.⁵ The Public Records Act is liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose.⁶

³ *Shevin v. Bryon, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁴ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁵ *Christy v. Palm Beach County Sheriff’s Office*, 698 So.2d 1365, 1366 (Fla. 4th DCA 1997).

⁶ *Krischer v. D’Amato*, 674 So.2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So.2d 1000, 1002

There is a difference between records that the Legislature has made exempt from public inspection and those that are exempt and confidential. If the Legislature makes a record confidential, with no provision for its release such that its confidential status will be maintained, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁷ If a record is not made confidential but is simply exempt from mandatory disclosure requirements, an agency has discretion to release the record in all circumstances.⁸

Under s. 119.10, F.S., any public officer violating any provision of this chapter is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. In addition, any person willfully and knowingly violating any provision of the chapter is guilty of a first-degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000. Section 119.10, F.S., also provides a first-degree misdemeanor penalty for public officers who knowingly violate the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, as well as suspension and removal or impeachment from office.

An exemption from disclosure requirements does not render a record automatically privileged for discovery purposes under the Florida Rules of Civil Procedure.⁹ For example, the Fourth District Court of Appeal has found that an exemption for active criminal investigative information did not override discovery authorized by the Rules of Juvenile Procedure and permitted a mother who was a party to a dependency proceeding involving her daughter to inspect the criminal investigative records relating to the death of her infant.¹⁰ The Second District Court of Appeal also has held that records that are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records.¹¹

(Fla. 5th DCA 1987), review denied, 520 So.2d 586 (Fla. 1988); *Tribune Company v. Public Records*, 493 So.2d 480, 483 (Fla. 2d DCA 1986), review denied sub nom., *Gillum v. Tribune Company*, 503 So.2d 327 (Fla. 1987).

⁷ Attorney General Opinion 85-62.

⁸ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁹ *Department of Professional Regulation v. Spiva*, 478 So.2d 382 (Fla. 1st DCA 1985).

¹⁰ *B.B. v. Department of Children and Family Services*, 731 So.2d 30 (Fla. 4th DCA 1999).

¹¹ *Department of Highway Safety and Motor Vehicles v.*

The Open Government Sunset Review Act of 1995

Section 119.15, F.S. (2004), the Open Government Sunset Review Act of 1995, establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S. (2004), a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years. Further, a law that enacts or substantially amends an exemption must state 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 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.

In the year before the scheduled repeal of an exemption, the Division of Statutory Revision is required to 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 criteria of an exemption as, defined in s. 119.15, F.S. An exemption that is not identified and certified is not subject to legislative review and repeal. If the division fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

Under the requirements of the Open Government Sunset Review Act of 1995 (2004), an exemption is to be maintained only if:

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

As part of the review process, s. 119.15(4)(a), F.S. (2004), requires the consideration of the following specific questions:

- 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?

Further, under the Open Government Sunset Review Act of 1995 (2004), an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects 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; or
- Protects 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.

Further, the exemption must be no broader than is necessary to meet the public purpose it serves.¹² In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

METHODOLOGY

Staff researched relevant statutory provisions and case law, surveyed DOH, and contacted other interested stakeholders.

Kreji Company Inc., 570 So.2d 1322 (Fla. 2d DCA 1990).

¹² *Memorial Hospital–West Volusia, Inc. v. News-Journal Corporation*, 2002WL 390687 (Fla. Cir. Ct.).

FINDINGS

Section 119.07(6)(cc), F.S. (2004), makes all personal identifying information; bank account numbers; and debit, charge, and credit card numbers contained in records *relating to an individual's personal health or eligibility for health related services made or received* by DOH confidential and exempt from the Public Records Law. Such information must be disclosed under the following circumstances: with the express written consent of the individual or the individual's legal representative; in a medical emergency, but only to the extent necessary to protect the health or life of the individual; by court order upon a showing of good cause; or to a health research entity, if the entity seeks the records or data pursuant to a research protocol, and enters into a purchase and data-use agreement with DOH.

Section 119.07(6)(cc), F.S. (2004), requires the purchase or data-use agreement to restrict the release of any information which would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data containing information made confidential and exempt under s. 119.07(6)(cc), F.S. (2004), and disclosed by DOH to a health research entity under a research protocol remains the property of DOH. The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

Personal Identifying Information

The specific records affected by the exemption in s. 119.07(6)(cc), F.S. (2004), are records *relating to an individual's personal health or eligibility for health related services made or received* by DOH. The department administers a variety of health-related programs and services, some of which are coordinated by designated service providers. The department's client services include medical care and case management. Services are provided to children and adults who live in Florida.

The department maintains numerous records that relate to an individual's personal health. The records are held by the county health departments, the Children's Medical Services program, the Brain and Spinal Cord

Injury Program, Vital Statistics, and the Diabetes Insulin Distribution Program. The department makes or receives information relating to an individual's immunizations; test results for sexually transmissible diseases, hepatitis and infectious diseases, tuberculosis, and communicable diseases; family planning; primary health care; and eligibility for the Special Supplemental Nutrition Program for Women, Infants, and Children. The department collects disease surveillance data and collects personal identifying information and personal health information for individuals affected by specified diseases such as cancer, breast and cervical cancer, sudden infant death syndrome, and HIV/AIDS.

In addition, to the information about an individual's personal health, DOH or its contractors collect personal identifying information within the records of the department's clients. As a provider of health care services, DOH must verify the identity of the individual who seeks health care services for appropriate follow-up and consultation regarding any needed tests. The medical record created becomes a legal document in some cases. Additionally DOH must ascertain whether the individual is eligible under applicable law for the specified health care services sought. For example, under s. 154.011, F.S., DOH provides primary health care services to Medicaid recipients and other qualified low-income persons through county health departments.

Some of the programs within DOH provide case management services, such as the Epilepsy Services program, and maintain records relating to an individual's eligibility for health related services. The Closing the Gap projects managed by the department collect personal identifying information and health related information to evaluate interventions for individuals and to refer individuals to appropriate services.

In addition to s. 119.07(6)(cc), F.S. (2004), various provisions of state and federal law protect the confidentiality of an individual's health information when held by DOH. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects the privacy rights of individuals over their health information, and serves as a floor of privacy rights for certain health information. HIPAA regulations only apply to covered entities (health providers who engage in certain electronic transactions, health plans, and health care clearinghouses). Under HIPAA, state law that provides greater confidentiality to protected health information is not preempted or invalidated by HIPAA. The protection of confidentiality under HIPAA is not

as comprehensive as the protection given under s 119.07(6)(cc), F.S.(2004), because HIPAA would not preempt state public records laws. HIPAA permits a covered entity to use and disclose protected health information as required by other law, including state law.¹³ If a state public records law mandates that a covered entity disclose protected health information, the disclosure would be authorized under HIPAA if the disclosure complies with and is limited to the relevant requirements of the public records law.

The Florida Supreme Court has held that the public's access to records is a substantive right under Florida law.¹⁴ The Florida Constitution requires state agencies that are subject to the requirements of the Public Records Law under Art. I, Sec. 24, to interpret the laws providing the public access to records broadly rather than narrowly. The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose.¹⁵ Thus, if the exemption under s 119.07(6)(cc), F.S. (2004), did not exist, the Department of Health would be compelled to disclose personal identifying information in records *relating to an individual's personal health or eligibility for health related services made or received by DOH*.

The confidentiality given by other provisions of state law to records relating to an individual's personal health or eligibility for health related services held by DOH is not identical to, or as comprehensive in scope, as the protection afforded to the records covered by the exemption under review. Under Florida law, s. 456.057(5)(a), F.S., provides a broad and express privilege of confidentiality to medical records and the medical condition of a patient by providing that such records may not be furnished to, and the medical condition discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient.¹⁶

In addition to s. 456.057, F.S., other provisions of Florida law provide confidentiality for specialized health information. Other provisions of Florida law

providing confidentiality of health information held by DOH include:

- **HIV/AIDS information** (ss. 381.004, 627.429, and 641.3007, F.S.);
- **Cancer registry** (s. 385.202, F.S.);
- **Diseases reported to DOH** (ss. 381.0031(4) and 384.29, F.S.);
- **Individual student health services records** (ss. 381.0056(5)(p) and 1002.22, F.S.);
- **Brain and spinal cord injury records** (s. 381.775, F.S.);
- **Death certificates** (s. 382.008(6), F.S.);
- **Birth certificates** (s. 382.013(5), F.S.);
- **Birth records** (s. 382.025, F.S.);
- **Metabolic, hereditary and congenital disorders registry** (s. 383.14(3)(d), F.S.);
- **Birth center clinical records** (s. 383.32(3), F.S.);
- **Sexually transmissible disease (STD)-contact investigations** (s. 384.26, F.S.);
- **Judicial proceedings for STD examination** (s. 384.282, F.S.);
- **Tuberculosis – contact investigation** (s. 392.54, F.S.);
- **Judicial proceedings for tuberculosis examination** (s. 392.545, F.S.);
- **Tuberculosis** (s. 392.65, F.S.);
- **Trauma Registry and other records** (ss. 395.4025(9) and (12), and 395.404, F.S.);
- **Emergency medical services records** (ss. 401.30(3) and (4), 401.414(3), 401.425(5), F.S.);
- **Medical information for research** (s. 405.03, F.S.);
- **Medical information from health care practitioner licensure applicants** (s. 456.014(1), F.S.);
- **Patient names in practitioner profiles** (s. 456.046, F.S.);
- **Patient name – professional liability reports** (s. 456.051(1), F.S.);
- **Patient records obtained by DOH when investigating and prosecuting complaints against licensed health care practitioners** (s. 456.057(7) and (8), F.S.);
- **Compelled physical or mental examination of certain licensed health care practitioners** (ss. 458.331(1)(s), 459.015(1)(w), 457.109(1)(o), 464.018(1)(j), 466.028(1)(s), and 486.125(1)(a), F.S.);
- **Hepatitis B status of licensed dental practitioners** (s. 466.041(3), F.S.); and

¹³ See 45 CFR 164.512(a).

¹⁴ See *Memorial Hospital-West, Inc. v. News-Journal Corporation*, 784 So.2d 438 (Fla. 2001).

¹⁵ See *Kirscher v. D'Amato*, 674 So.2d 909, 911 (Fla.4th DCA 1996).

¹⁶ See *Acosta v. Richter* 671 So.2d 149 (Fla.1996).

- **Sovereign immunity- adverse incident reports** (s. 766.1115(4)(c), F.S.).

In some instances, other provisions of state law protect the confidentiality of the health information and also make the health information exempt from disclosure under the Public Records Law, but the disclosure or nondisclosure of the health information is dependent on the scope of the specific exemption. Illustrative of this issue, the scope of the Public Records exemption for patient records held by DOH under s. 456.057(8), F.S., is limited to its investigation and prosecution of licensed health care practitioners. Section 456.057(8), F.S., authorizes DOH to obtain patient records without a subpoena under certain circumstances when investigating a licensed health care practitioner and limits the use of the records to disciplinary proceedings.

Notwithstanding other provisions providing specialized confidentiality to certain patient information held by DOH, such information would have to be disclosed as a public record by DOH if s. 119.07(6)(cc), F.S.(2004), did not exempt its disclosure. The scope of the Public Records exemptions for specialized health information maintained by DOH is not broad enough to prevent the disclosure of personal identifying information contained in records *relating to an individual's personal health or eligibility for health related services made or received* by DOH.

The exemption under review in s. 119.07(6)(cc), F.S. (2004), protects information of a sensitive, personal nature concerning individuals. Under the Open Government Sunset Review Act, information that is of a sensitive personal nature is limited to information that if released 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. Personal identifying information contained in records *relating to an individual's personal health or eligibility for health related services made or received* by DOH could be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals. The release of protected health information exempt from disclosure under the exemption, in some cases, would jeopardize the safety of such individuals. Without the exemption, entities could make a public records request and exploit the health information maintained by the department for financial gain. Also, under Florida and federal law, an individual's health information held by private persons not subject to the Public Records Law is protected from disclosure and

may only be disclosed under specified and limited circumstances.

The exemption to the Public Records Law under review also assists DOH to effectively and efficiently administer its health services and case management services. Officials at DOH argue that continuation of the exemption under s. 119.07(6)(cc), F.S. (2004), is critical for DOH to protect information that patients traditionally expect to be confidential when patients frankly disclose information dealing with their health. The DOH supports continuation of the exemption under review based on its need to efficiently and effectively administer its programs. Although the department has statutory authority to compel treatment for certain diseases that are a threat to public health, the department's ability to effectively and efficiently administer its health related programs would be impaired if persons seeking health services were not assured that the information of a sensitive personal nature was protected from disclosure.

The exemption balances the public's access to records without impairing the need to protect the confidentiality of sensitive information or diminishing DOH's ongoing administration of its health related programs. The exemption is sufficiently narrow to accomplish its public purpose because the health records or health-related records are only available when all personal identifying information has been redacted.

Bank Account, Debit, Charge, and Credit Card Numbers

In addition to s. 119.07(6)(cc), F.S. (2004), various laws protect the confidentiality of bank account numbers, and debit, charge, and credit card numbers held by state agencies. Section 119.07(6)(dd), F.S. (2004), makes bank account numbers and debit, charge, and credit card numbers held by an agency exempt from the Public Records Law. Section 215.322 (6), F.S., makes credit card account numbers in the possession of a state agency, a unit of local government, or the judicial branch confidential and exempt from the Public Records Law. Under s. 215.322(2), F.S., a state agency or the judicial branch may accept credit cards, charge cards, or debit cards in payment for goods and services with the prior approval of the Chief Financial Officer (CFO).

Section 215.322, F.S., requires the CFO to adopt rules governing the establishment and acceptance of credit cards, charge cards, or debit cards by state agencies or the judicial branch, including: the utilization of a

standardized contract between the financial institution or other appropriate intermediaries and the agency that must be developed by the CFO; procedures that permit an agency or officer accepting payment by credit card, charge card, or debit card to impose a convenience fee upon the person making the payment; the procedures for the payment of service fees; submission of information to the CFO concerning the acceptance of credit cards, charge cards, or debit cards by all state agencies or the judicial branch; and a methodology for agencies to complete an analysis of the benefits to the participating agency and the public which substantiates the cost of accepting payment by credit cards, charge cards, and debit cards. The CFO has adopted administrative rules outlining procedures for a state agency or the judicial branch wishing to accept payments by credit card, charge card, or debit card to submit a written proposal to the CFO that includes the anticipated economic and other benefits that would accrue to the state.¹⁷ All state agencies and the judicial branch, including DOH must comply with the requirements of s. 215.322, F.S., and the administrative rules adopted by the CFO for the agency's acceptance of credit cards, charge cards or debit cards.

Since 1999, DOH has requested approval for, and has accepted credit card payments through a third party intermediary for clinic services and vital records in county health departments, clinic fees in the Children's Medical Services program, laboratory services in the state laboratories, and birth and death certificates in the Office of Vital Records.¹⁸ Within county health departments, DOH maintains records that contain bank account numbers, and debit, charge, and credit card numbers. Such financial information is kept in records that are secure and confidential, but may be linked to a specific patient for a health related service. Several county health departments contract with a third party to accept credit cards, charge cards, debit cards, and other forms of electronic payment. The financial information is maintained by the county health departments, as applicable, and third party firms with which the department contracts to process credit, charge, or debit card payments or electronic transfer of funds. County health departments maintain the original signed receipt for third party payment via credit, debit, or charge card for reconciliation of payment. Such financial records are kept in secured areas in accordance with policies established by DOH and the retention schedule adopted by the Department of State.

¹⁷ See chapter 69C-4, Florida Administrative Code.

¹⁸ Letter dated September 24, 1999, from the Department of Health to the Executive Office of the Governor.

Financial information held by state agencies or any other entity acting on behalf of any public agency may be misused if it becomes available as a public record. Credit card and bank account numbers and other consumer financial information have been stolen on the Internet and pilfered and misused.¹⁹ A major credit card payment processor acknowledged that its computer network had improperly stored the names, account numbers, and other information of about 200,000 cardholders in violation of its own security rules.²⁰ The exemption in s. 119.07(6)(cc), F.S. (2004), protects, in part, persons who pay a fee or debt to DOH by use of charge, credit, or debit cards, or bank accounts.

In part, the purpose of the exemption under s. 119.07(6)(cc), F.S. (2004), is to protect financial information that DOH obtains when a person makes use of electronic and other payment options that require the disclosure of bank account numbers, and debit, charge, and credit account numbers contained in records *relating to an individual's personal health or eligibility for health related services made or received* by DOH. Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. The exemption under review allows DOH to effectively and efficiently administer a governmental program. The use of electronic and other payment options is necessary for the effective and efficient administration of modern government programs. The DOH's acceptance of credit card and other payment options will be more convenient for individuals who use the department's health care services. The exemption under s. 119.07(6)(cc), F.S. (2004), could be narrowed to exclude bank account numbers; and debit, charge, and credit card numbers, because this information as maintained by DOH or its agents is already exempt under other provisions of Florida law.

Disclosures under s. 119.07(6)(cc), F.S. (2004)

Section 119.07(6)(cc), F.S. (2004), authorizes disclosure of the confidential and exempt information to a health research entity, but requires a purchase or data-use agreement to restrict the release of any information which would permit the identification of

¹⁹ "Black Market in Stolen Credit Card Data Thrives on Internet" Tom Zeller The New York Times (June 21, 2005).

²⁰ "CardSystems Sets Plan to Comply With Security Standards" Eric Dash The New York Times (July 8, 2005).

persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data containing information made confidential and exempt under s. 119.07(6)(cc), F.S. (2004), and disclosed by DOH to a health research entity under a research protocol remains the property of the DOH. The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

personal identifying information contained in records relating to an individual’s personal health or eligibility for health related services *held* by DOH rather than *made or received* by DOH.

Officials at DOH report that disclosures to research entities have not been made because DOH has not had any request for or approved any protocols for the release of information to any research entities. The Children’s Medical Services program reports that its contracted health care providers may have released non-identifying information for research purposes, but such releases are not tracked. In addition to the required disclosures under s. 119.07(6)(cc), F.S. (2004), an individual’s health records made or received by DOH may be disclosed by DOH in accordance with other provisions of Florida law. Generally, patient medical information in possession of DOH may be shared with any other health care provider for treatment of the patient without authorization or consent from the patient.²¹

RECOMMENDATIONS

Staff recommends that the exemption contained in s. 119.07(6)(cc), F.S. (2004), which protects bank account numbers; credit, debit, and charge account numbers and personal identifying information contained in records relating to an individual’s personal health or eligibility for health related services be preserved in accordance with staff’s review of the exemption under the criteria in the Open Government Sunset Review Act of 1995 (2004). Staff recommends that the exemption be amended to exclude bank account numbers; and debit, charge, and credit card numbers because this information as maintained by DOH or its agents is already exempt under other provisions of Florida law. Staff also recommends that the exemption be amended to clarify that the information exempt under the Public Records Law is

²¹ See s. 456.057(5)(a), F.S.