

STORAGE NAME: h0245a.hhs

DATE: April 20, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
HEALTH AND HUMAN SERVICES APPROPRIATIONS
ANALYSIS**

BILL #: HB 245

RELATING TO: Public Records/Patient Information

SPONSOR(S): Representative Goode

COMPANION BILL(S) : SB 674 (similar), HB 247 (compare), CS/SB 276 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION YEAS 10 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS (W/D)
 - (3) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 8 NAYS 0
 - (4)
 - (5)
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I. SUMMARY:

HB 245 creates an exemption for patient records of home medical equipment providers from the public records disclosure law.

It also exempts criminal records, juvenile records, and central abuse registry information obtained for determining good moral character of home medical equipment personnel from the public records disclosure law.

A public necessity statement is provided for these exemptions as required by Art. 1., s. 24, of the Florida Constitution.

There is no fiscal impact on the state, local government or the private sector.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

Every person has the right to inspect or copy any public records 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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. 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 that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. 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. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. 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.

Exemptions are analyzed using the following definition of public necessity: A public necessity justifying an exemption exists when, after considering the public good served by access to the record or meeting and the public or private harm that could be caused by allowing or denying access to the record or meeting, it is determined that the presumption in favor of open records and meetings is overcome because the public's interests are best served by denying access in whole or in part to the record or meeting; and, access is denied to as little of the record or meeting as is practicable.

Medical Records

Many documents are obtained during inspection of a business licensed by the Agency for Health Care Administration. Records obtained during the inspection of a health care facility may include confidential patient medical documentation. Additionally, information obtained during the process of background screening may include personal and sensitive information.

Information contained in patient records, or information such as criminal records, juvenile records, and abuse registry information is generally exempt from the provision of s. 119.07 (1), F.S. Patient records are already exempt from the public records law in home health agencies, nursing homes, hospitals and other health care facilities. Information obtained through background screening of personnel in home health agencies, nurse registry personnel, and homemakers, companions and sitters is already exempt from public records law. Since home medical equipment providers are not licensed in Florida, this information is not currently collected by the state.

There are more than 250 provisions in law relating to the confidentiality of medical records. Under state law, patient information that is in the possession of a health care practitioner or a state agency is confidential, except under certain specific circumstances. See s. 455.667, F.S. (formerly s. 455.241, F.S.). As confidential information, patient records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care providers involved in the care or treatment of the patient, except upon written authorization of the patient.

There are significant exceptions to the, otherwise, exclusive control given patients over such information:

- Release, without written authorization, of physical or mental examination or administered treatment information to a person that procures such examination or treatment with the patient's consent;
- Forwarding of examination results obtained when a compulsory physical examination is performed for purposes of civil litigation in conformity with the Rules of Civil Procedure; or
- Upon issuance of a subpoena in a civil or criminal action.

B. EFFECT OF PROPOSED CHANGES:

Creates public records exemptions for patient information received by home medical equipment providers and persons employed by, or providing services to, such home medical equipment providers, or which is received by the licensing agency through reports or inspection.

Public necessity statements are provided for the exemptions as required by Art. 1, s. 24 of the Florida Constitution.

The bill is tied to the enactment of legislation which creates Part X of chapter 400, F.S., requiring licensure of medical equipment providers.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

Yes. Individuals would not have access to certain public records.

- b. If an agency or program is eliminated or reduced:

The bill does not eliminate or reduce an agency or program.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Yes. Individuals would not have access to certain public records.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. By exempting certain information from public records laws, more individuals may seek the services of home medical equipment providers, and more individuals may seek employment with home medical equipment providers.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Individuals would not have access to certain public records.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

None.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Exempts information concerning patients of home medical providers from the public records law. Such information, when obtained by the home medical equipment supplier or by the Agency for Health Care Administration is exempt from public records release without the individual's consent. Provides for repeal on October 2, 2004, pursuant to the Open Government Sunset Review Act of 1995.

Section 2. Expresses the public necessity of these exemptions to protect the individual's right to privacy.

Section 3. Exempts information in connection with background screening of prospective employees from the public records law. Such information, when obtained by the home medical equipment supplier or by the Agency for Health Care Administration is exempt from public records release without the individual's consent. Provides for repeal on October 2, 2004, pursuant to the Open Government Sunset Review Act.

Section 4. Expresses necessity of these exemptions on the basis of the potential shortage of applicants for employment with medical equipment suppliers if information of past misbehavior from juvenile records, criminal records, or central abuse registry are not kept confidential.

Section 5. Provides for an effective date to coincide with legislation requiring licensure of home medical equipment providers.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. **FISCAL COMMENTS:**

There is no fiscal impact on the Agency for Health Care Administration, local government, or the private sector. However, this bill is associated with House Bill 247 requiring the licensure of home medical equipment providers. The Agency for Health Care Administration estimates the regulatory costs associated with House Bill 247 to be \$613,721 and thirteen positions. The bill includes an appropriation of \$701,370 and thirteen positions and authorizes biennial license fees up to \$300 and inspection fees up to \$400 to cover the costs of regulation.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take and action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

Comments by the Committee on Health Care Licensing & Regulation

This bill accompanies HB 247, which provides for licensure by the Agency for Health Care Administration of home medical equipment providers. This bill protects confidential or sensitive information about patients received by home medical equipment providers or by the licensing agency from unconsented public release. The bill identifies the public necessity for exempting this information as the individual's right to privacy. Exemption from the provisions of s. 119.07 (1), F. S., is also provided for background screening records of employees of home medical equipment suppliers.

Comments by the Committee on Governmental Operations

This bill makes confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a), Fla. Const., two types of information: information about patients of home medical equipment providers, and information about prospective employees and employees of home medical equipment providers, as provided in HB 247. Article 1, s. 24(c), Fla. Const., provides that laws creating public record exemptions shall relate to one subject. While the bill creates two exemptions, the nexus between them is that both relate to home medical equipment providers.

The use of the word "or" on page 1, line 21, seems to create a public record exemption for the nonpublic records held by the private entity home medical equipment providers. Public record laws apply only to public entities, and occasionally private entities when they act "on behalf of" a public entity.

The use of the phrase "information about patients" seems overly broad, which raises concerns over the constitutionality of the scope of the exemption, which should be no greater than necessary to accomplish the purpose. Relatedly, the public necessity statement gives very little justification for the exemption, which raises concerns over the constitutionality of the sufficiency of the purpose of the exemption.

The bill does not create or amend a section of the Florida Statutes, as most public record exemption bills do.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

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