

**STORAGE NAME:** h2321.hcs

**DATE:** April 6, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
HEALTH CARE SERVICES  
ANALYSIS**

**BILL #:** HB 2321 (PCB HCS 00-04)

**RELATING TO:** Public Records

**SPONSOR(S):** Committee on Health Care Services, Rep. Peadar

**TIED BILL(S):**

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

(1) HEALTH CARE SERVICES YEAS 13 NAYS 0

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I. SUMMARY:

HB 2321 creates an exemption from the public records provisions of s. 119.07(1), F.S., and Art. 1, s. 24(a), Florida Constitution, relating to all information and records held by the Department of Health and its authorized service providers that would identify an individual applying to, or receiving services from, the department's brain and spinal cord injury program.

A subsequent repeal and review is specified for this exemption as required by s. 119.15(3)(a), F.S. A public necessity statement is provided for this exemption, as required by Art. I, s. 24, Florida Constitution.

The bill's effective date is July 1, 2000.

This bill has no fiscal impact on state or local governments, or the private sector.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |                                         |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**The Brain and Spinal Cord Injury Program**

The Brain and Spinal Cord Injury Program was established to provide all eligible injured individuals with the opportunity to obtain the necessary services to enable them to be referred to a vocational rehabilitation program or to an appropriate level of functioning in their community. Last year the program received \$13,927,316 in revenue, spent \$11,779,392 in expenses. Approximately 68 percent of the funds were spent on client services, 5 percent on administration, 7 percent on centers for independent living, 8 percent on research, and 12 percent on contracts. Last year 2,670 individuals were referred to the program. The program handled 4,822 cases, opening 1,888 cases and closing 2,934 cases.

The Legislature transferred the Brain and Spinal Cord Injury Program to the Department of Health from the Department of Labor and Employment Security effective January 1, 2000, as part of chapter 99-240, Laws of Florida. While much of the statutory language necessary for the program's operations was transferred from chapter 413, F.S., to chapter 381, F.S., not all statutory authority necessary for the operation of the program was transferred to or replicated in chapter 381 from chapter 413. Specifically, the statutory authority contained in s. 413.012, F.S., relating to the confidentiality of sensitive personal information of applicants or recipients, was not included in this transfer. The confidentiality of this information is essential to ensuring that applicants and recipients are willing to fully participate in the program.

**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.

### **Personal Identifying or Medical Records**

There are more than 250 provisions in law relating to the confidentiality of medical records. Under s. 455.667, F.S. (formerly s. 455.241, F.S., 1996 Supplement), patient information that is in the possession of a health care practitioner is confidential, except under certain specific circumstances. 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.

**C. EFFECT OF PROPOSED CHANGES:**

See SECTION-BY-SECTION ANALYSIS which follows.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1.** Creates s. 381.775, F.S., which provides that oral and written records, information, letters, and reports received, made, or maintained by the department relating to the any applicant or recipient of brain and spinal cord injury program services are privileged, confidential, and are not subject to the public records provisions of s. 119.07(1), F.S., and Art. I of the State Constitution. Provides that release of such records is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S. Provides exceptions for release of records:

- To specified individuals, agencies, or proceedings;
- Whenever an applicant or recipient has declared an intent to unlawfully harm another person or property;
- To protect the applicant or recipient whenever he or she poses a threat to his or her own safety or to the safety of others; or
- Upon the official request of a law enforcement agency investigating the commission of a crime.

Provides that records that come into the possession of the department and that are confidential by other provisions of law remain confidential and may not be released except as authorized by this act.

Provides that this section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2005, unless reenacted.

**Section 2.** Provides a legislative finding of public necessity to protect the confidentiality of the applicant and client records and information of the program because of the private nature of the information and because the individuals have a right of privacy as provided by s. 23, Art. I of the State Constitution. Provides that public knowledge of such private information could compromise the therapeutic process and that such programs can not operate efficiently and effectively if individuals are reluctant to participate.

**Section 3.** Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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 action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

As required by Art. I, s. 24, of the Florida Constitution, a public necessity statement accompanies this proposed public records exemption.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

As required by s. 119.15(3)(a), F.S., a subsequent repeal and review of this exemption under the Open Government Sunset Review Act of 1995 is specified.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

Staff Director:

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