

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1887 (PCB HC 04-09) Public Records Exemption/Patient Safety Corporation
SPONSOR(S): Committee on Health Care and Farkas
TIED BILLS: HB 1885 (PCB HC 04-06) **IDEN./SIM. BILLS:** CS/SB 702 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care	21 Y, 0 N	Mitchell	Collins
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

In 2003, the House Select Committee on Medical Liability Insurance and the Governor's Select Task Force on Healthcare Professional Liability Insurance heard information regarding the need to address rising medical liability rates, the reasons for rising costs, and actions the Legislature may take. The committee and task force found that improvements in patient safety can reduce medical errors that drive malpractice insurance rates.

HB 1887 creates s. 381.0273, F.S., to provide that information contained in patient safety data or other records maintained by the Florida Patient Safety Corporation and its subsidiaries, advisory committees, and contractors, that identifies a patient or that identifies the person or entity reporting patient safety data is confidential and exempt from public records requirements. The bill also provides that minutes of closed portions of meetings are confidential and exempt from public records requirements.

The bill authorizes the release of the information to a health research entity or licensed health insurer; providing that portions of meetings held by the corporation and its subsidiaries, advisory committees, and contractors at which such information is discussed are exempt from public meetings requirements.

The bill includes a statement of public necessity that:

- Health care practitioners and health care facilities would be unlikely to voluntarily submit patient safety data if their identity were made public.
- Patient safety information that identifies a patient or the person reporting the information is sensitive and personal and could be defamatory or could cause unwarranted damage to the person.
- Any portion of a meeting of the corporation and its subsidiaries, advisory committees, and contractors be closed when confidential and exempt information is discussed, and those portions of the minutes of the meeting also be confidential and exempt.

The bill states that the Legislature finds that without these protections, the effectiveness of the Florida Patient Safety Corporation would be jeopardized and the ability of the corporation to assist health care practitioners and health care facilities to reduce and prevent injury to patients in the future would be significantly impaired.

The bill provides for future legislative review and repeal on October 2, 2009, under the Open Government Sunset Review Act of 1995, unless the provisions are reenacted.

The bill provides the act shall take effect upon becoming a law, contingent on passage of the tied bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1887.hc.doc
DATE: March 29, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

HB 1887 creates s. 381.0273, F.S., to provide that information contained in patient safety data or other records maintained by the Florida Patient Safety Corporation and its subsidiaries, advisory committees, and contractors, that identifies a patient or that identifies the person or entity reporting patient safety data is confidential and exempt from public records requirements.

The bill also provides that minutes of closed portions of meetings are confidential and exempt from public records requirements.

The bill authorizes the release of the information to a health research entity or licensed health insurer; providing that portions of meetings held by the corporation and its subsidiaries, advisory committees, and contractors at which such information is discussed are exempt from public meetings requirements.

The bill provides Legislative findings of public necessity that:

- Information that identifies a patient contained in patient safety data, as defined in s. 766.1016, or other records held by the Florida Patient Safety Corporation and its subsidiaries, advisory committees, and contractors be made confidential and exempt from public disclosure, because such information is of a sensitive and personal nature and the release of such information could be defamatory to the patient or could cause unwarranted damage to the name or reputation of the patient.
- Information that identifies the person or entity reporting patient safety data to the Florida Patient Safety Corporation and its subsidiaries, advisory committees, and contractors also be protected since health care practitioners and health care facilities would be unlikely to voluntarily submit patient safety data if their identity were made public. Such information could be defamatory to the person or entity or could cause unwarranted damage to the name or reputation of the person or entity.
- Any portion of a meeting of the Florida Patient Safety Corporation and its subsidiaries, advisory committees, and contractors be closed when confidential and exempt information is discussed, and those portions of the minutes of the meeting also be confidential and exempt.

The bill states that the Legislature finds that without these protections, the effectiveness of the Florida Patient Safety Corporation would be jeopardized and the ability of the Florida Patient Safety Corporation to assist health care practitioners and health care facilities to reduce and prevent injury to patients in the future would be significantly impaired.

The bill provides for future legislative review and repeal on October 2, 2009, under the Open Government Sunset Review Act of 1995, unless the provisions are reenacted.

The bill provides the act shall take effect upon becoming a law contingent on passage of the tied bill.

CURRENT SITUATION

In 2003, the House Select Committee on Medical Liability Insurance and the Governor's Select Task Force on Healthcare Professional Liability Insurance heard information from stakeholders and experts regarding the need to address rising medical liability rates, the reasons for rising costs, and actions the Legislature may take. The committee and task force were presented research findings which show that improvements in patient safety can reduce medical errors that drive malpractice insurance rates.

Methods suggested to decrease the number of errors included increased reporting and analysis of errors. This would permit the study of why an error occurred and allow the determination of how to prevent the error in the future. Other proposals included computer entry of drug information and medical history so that such information can both be easily retrieved by all medical providers and have a heightened degree of accuracy.

Exemptions from Public Records Requirements

Because providers do not voluntarily report their own errors, hospitals, managed care organizations, and medical colleagues are usually required to report their members or peers. Twenty states, including Florida, require mandatory reporting of medical errors and adverse events. Such reporting requires a delicate balance between the roles of public accountability and learning from errors, and between legitimate reports and those motivated for other reasons.

To encourage reporting, s. 395.0197(7), F.S., the required 15-day adverse incident report for health facilities is exempt from the public records law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board.

C. SECTION DIRECTORY:

Section 1. Creates s. 381.0273, F.S., providing a public records exemption for information contained in patient safety data, records, and meetings of the Florida Patient Safety Corporation and its subsidiaries, advisory committees and contractors that identifies a patient. Provides for repeal of the provision under the Open Government Sunset Review Act, on October 2, 2009, unless reenacted by the Legislature.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of upon becoming a law, if the tied bill is adopted in the same legislative session or an extension.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly-created public records or public meetings exemption. Thus, HB 1887 requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is required by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

¹ Section 119.15, F.S.

1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
3. Protecting trade or business secrets.

Other Comments

The Department of Health is concerned that while the bill exempts from public disclosure any information that identifies the "person or entity that reports patient safety data," existing statutory provisions do not provide protection for all information that may be provided to the corporation.

According to the department, facility adverse incident reports given to the corporation by AHCA already have this exemption under s. 395.1097, F.S. There is not statutory exemption for the adverse incidents reported under s. 458.351 or s. 459.026, F.S., for physicians' offices that will be provided to the corporation from the Department of Health, which could be accessed by the public.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES