

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care	21 Y, 0 N	Mitchell	Collins
2) State Administration	6 Y, 0 N w/CS	Williamson	Everhart
3)			
4)			
5)			

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### 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 testimony regarding the need to address rising medical liability rates, the reasons for rising costs, and actions the Legislature could take to affect positive change. The committee and task force found that improvements in patient safety can reduce medical errors that increase malpractice insurance rates.

This bill creates a public records exemption for patient identifying information and information identifying the person or entity reporting patient safety data, held by the Florida Patient Safety Corporation (corporation) and its subsidiaries, advisory committees, and contractors. It creates a public meetings exemption for any portion of a meeting held by the corporation or its subsidiaries, advisory committees, or contractors, wherein confidential and exempt information is discussed, and provides a public records exemption for minutes of closed portions of meetings.

This bill provides for future review and repeal of the exemption on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995. It also provides for exceptions to the exemption and provides a statement of public necessity and a contingent effective date.

This bill appears to have a minimal fiscal impact on state government. See "FISCAL IMPACT ON STATE GOVERNMENT" section.

**This bill requires a two-thirds vote of the members present and voting for passage.**

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

**STORAGE NAME:** h1887b.sa.doc  
**DATE:** April 16, 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:

Not applicable.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

In 2003, the House Select Committee on Medical Liability Insurance and the Governor’s Select Task Force on Healthcare Professional Liability Insurance heard testimony from stakeholders and experts regarding the need to address rising medical liability rates, the reasons for rising costs, and actions the Legislature could take. The committee and task force were presented research findings which showed 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 for a 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.

##### Public Records Exemptions

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 legitimate reports and those motivated for other reasons.

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

##### Effect of Bill

This bill creates a public records exemption for patient identifying and information that identifies the person or entity reporting patient safety data, held by the Florida Patient Safety Corporation (corporation) and its subsidiaries, advisory committees, and contractors. It authorizes the disclosure of such information only:

- With the express written consent of the patient or the patient’s legally authorized representative, and such consent only authorizes the release of information regarding that patient;

- With the express written consent of the person or entity reporting the patient safety data to the corporation, and such consent only authorizes the release of information regarding that person or entity;
- By court order upon a showing of good cause; or
- To a health research entity if the entity seeks such information pursuant to a research protocol approved by the corporation, maintains such confidential and exempt information in accordance with the approved protocol, and enters into a purchase and data-use agreement with the corporation.<sup>1</sup>

This bill creates a public meetings exemption for any portion of a meeting held by the corporation or its subsidiaries, advisory committees, or contractors, wherein confidential and exempt information is discussed. It also provides that minutes of closed portions of meetings are confidential and exempt from public disclosure.

This bill provides for future review and repeal of the exemption on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 381.0273, F.S., creating a public records and public meetings exemption for the Florida Patient Safety Corporation and its subsidiaries, advisory committees and contractors.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

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<sup>1</sup> The corporation may deny a research entity's request for such information if the entity's 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 such confidential and exempt information after the research is concluded, or does not have scientific merit.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect municipal or county government.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**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.

**Public Records and Public Meetings Laws**

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. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, 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 and meetings 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, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of

1995<sup>2</sup> 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. 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.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 14, 2004, the Committee on State Administration adopted an amendment to HB 1887 and reported the bill favorably with CS. The amendment makes clarifying changes and authorizes the release of patient identifying information or the identity of the person or entity reporting patient safety data only:

- With the express written consent of the patient or the patient's legally authorized representative.
- With the express written consent of the person or entity reporting the patient safety data to the corporation.
- By court order upon a showing of good cause.
- To a health research entity provided such entity protects such identities.

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<sup>2</sup> Section 119.15, F.S.