

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 674

SPONSOR: Health, Aging, and Long-Term Care Committee

SUBJECT: Review of Public Records Exemption/Home Medical Equipment Providers

DATE: January 8, 2004      REVISED: \_\_\_\_\_

|    | ANALYST       | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Harkey</u> | <u>Wilson</u>  | <u>HC</u> | <u>Favorable</u> |
| 2. | <u>Rhea</u>   | <u>Wilson</u>  | <u>GO</u> | <u>Favorable</u> |
| 3. | _____         | _____          | <u>RC</u> | _____            |
| 4. | _____         | _____          | _____     | _____            |
| 5. | _____         | _____          | _____     | _____            |
| 6. | _____         | _____          | _____     | _____            |

**I. Summary:**

This bill reenacts and amends s. 400.945, F.S., to continue the public records exemption for medical and personal identifying information about patients of home medical equipment providers received by the licensing agency, based on findings of the Open Government Sunset Review (Senate Interim Project Report 2004-206) that the exemption serves the public purpose of assisting the agency to effectively and efficiently regulate home medical equipment providers by protecting personal information of patients who file a complaint regarding equipment or service they have received. The amendment narrows the exemption by changing “other personal information” to “personal identifying information.”

The bill amends s. 400.945, F.S.

**II. Present Situation:**

**Public Records**

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. While the state constitution provides that records are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met.

Article I, s. 24, of the State Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the State Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records exemptions that are created or substantially amended in 1996 and subsequently. The review cycle began in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

Under the Open Government Sunset Review Act of 1995, 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.

### **Public Records Exemption for Information about Patients of Home Medical Equipment Providers**

Part X of ch. 400, F.S., requires home medical equipment providers to be licensed by the Agency for Health Care Administration. Section 400.94, F.S., requires each home medical equipment provider to maintain a record for each patient that must include any physician’s order or certificate of medical necessity, signed and dated delivery slips, notes reflecting all services and maintenance performed, and the date on which rental equipment was retrieved. These records are considered patient records under s. 456.057, F.S., and must be maintained for 5 years following termination of services.

Section 400.945, F.S., makes confidential and exempt from the disclosure requirements of the Public Records Law medical and other personal information about patients of home medical equipment providers. This exemption is subject to the Open Government Sunset Review Act of

1995 in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

### **Public Necessity for the Exemption**

The legislation that created this exemption provided the following statement of public necessity:

*The Legislature finds that exempting medical and other personal information related to patients of home medical equipment providers from public records law requirements is a public necessity, in that the harm caused by the release of such personal and sensitive information outweighs any public benefit derived from releasing such information. The patients of home medical equipment providers need assurances that the medical and other information of a sensitive personal nature they share with the providers will be held in confidence by the licensing agency in order for the patients to provide essential, accurate information about themselves related to home medical equipment. The public disclosure of such information would lead to a reluctance on the part of patients to provide accurate information which would result in an adverse impact on their health.*

The Senate staff reviewed the public records exemption in s. 400.945, F.S., pursuant to the Open Government Sunset Review Act of 1995. As part of the review process, s. 119.15(4)(a), F.S., 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?

Based on findings of the Open Government Sunset Review (Senate Interim Project Report 2004-206), the staff found that the exemption serves the public purpose of assisting the Agency to effectively and efficiently regulate home medical equipment providers by protecting personal information of patients who file a complaint regarding equipment or service they have received.

### **III. Effect of Proposed Changes:**

The bill reenacts and amends s. 400.945, F.S., to continue the public records exemption for information about patients of home medical equipment providers. The bill amends s. 400.945, F.S., to clarify that it is personal identifying information, not other personal information, that is exempt.

The bill will take effect October 1, 2004.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The bill reenacts the public records exemption found in s. 400.945, F.S., in accordance with the Open Government Sunset Review Act of 1995.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.