

FOR CONSIDERATION By the Committee on Health Policy

588-00914-14

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunshine Review Act; amending s. 893.0551, F.S., which
4 makes confidential and exempt certain information of a
5 patient or patient's agent, health care practitioner,
6 and others held by the Department of Health;
7 specifying that the Attorney General, health care
8 regulatory boards, and law enforcement agencies may
9 disclose certain confidential and exempt information
10 to certain entities only if such information is
11 relevant to an active investigation that prompted the
12 request for the information; requiring the Attorney
13 General, health care regulatory boards, and law
14 enforcement agencies to take certain steps to ensure
15 the continued confidentiality of all nonrelevant
16 confidential and exempt information before disclosing
17 such information; requiring a law enforcement agency
18 to obtain a subpoena before such agency may receive
19 information from the prescription drug monitoring
20 database; authorizing a health care practitioner to
21 share a patient's information with that patient and
22 put such information in the patient's medical record
23 upon consent; authorizing the department to disclose,
24 under certain circumstances, relevant information that
25 does not include personal identifying information to a
26 law enforcement agency, rather than requiring the
27 department to disclose confidential and exempt
28 information; authorizing a law enforcement agency to
29 use specified information to support a subpoena,

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30 rather than to disclose confidential and exempt
31 information to a criminal justice agency; prohibiting
32 an agency or person who obtains specified confidential
33 and exempt information from disclosing such
34 information except under certain circumstances; saving
35 the exemption from repeal under the Open Government
36 Sunset Review Act; providing an effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

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40 Section 1. Section 893.0551, Florida Statutes, is amended
41 to read:

42 893.0551 Public records exemption for the prescription drug
43 monitoring program.—

44 (1) As used in ~~For purposes of~~ this section, the term:

45 (a) "Active investigation" has the same meaning as provided
46 in s. 893.055.

47 (b) "Dispenser" has the same meaning as provided in s.
48 893.055.

49 (c) "Health care practitioner" or "practitioner" has the
50 same meaning as provided in s. 893.055.

51 (d) "Health care regulatory board" has the same meaning as
52 provided in s. 893.055.

53 (e) "Law enforcement agency" has the same meaning as
54 provided in s. 893.055.

55 (f) "Pharmacist" means a ~~any~~ person licensed under chapter
56 465 to practice the profession of pharmacy.

57 (g) "Pharmacy" has the same meaning as provided in s.
58 893.055.

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59 (h) "Prescriber" has the same meaning as provided in s.
60 893.055.

61 (2) The following information of a patient or patient's
62 agent, a health care practitioner, a dispenser, an employee of
63 the practitioner who is acting on behalf of and at the direction
64 of the practitioner, a pharmacist, or a pharmacy which ~~that~~ is
65 contained in records held by the department under s. 893.055 is
66 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
67 of the State Constitution:

68 (a) Name.

69 (b) Address.

70 (c) Telephone number.

71 (d) Insurance plan number.

72 (e) Government-issued identification number.

73 (f) Provider number.

74 (g) Drug Enforcement Administration number.

75 (h) Any other unique identifying information or number.

76 (3) The department shall disclose such confidential and
77 exempt information to the following persons or entities after
78 using a verification process to ensure the legitimacy of that
79 person's or entity's request for the information:

80 (a) The Attorney General and his or her designee when
81 working on Medicaid fraud cases involving prescription drugs or
82 when the Attorney General has initiated a review of specific
83 identifiers of Medicaid fraud regarding prescription drugs. The
84 Attorney General or his or her designee may disclose to a
85 criminal justice agency as defined in s. 119.011 only ~~the~~
86 confidential and exempt information received from the department
87 which is relevant to a criminal justice agency as defined in s.

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88 ~~119.011 as part of an active investigation that prompted the~~
89 ~~request for the information that is specific to a violation of~~
90 ~~prescription drug abuse or prescription drug diversion law as it~~
91 ~~relates to controlled substances. Before disclosing any~~
92 ~~information to a criminal justice agency, the Attorney General~~
93 ~~or his or her designee must take steps to ensure the continued~~
94 ~~confidentiality of all confidential and exempt information. At a~~
95 ~~minimum, these steps must include redacting or deleting all~~
96 ~~nonrelevant information.~~ The Attorney General's Medicaid fraud
97 investigators may not have direct access to the department's
98 database.

99 (b) The department's relevant health care regulatory boards
100 responsible for the licensure, regulation, or discipline of a
101 practitioner, pharmacist, or other person who is authorized to
102 prescribe, administer, or dispense controlled substances and who
103 is involved in a specific controlled substances investigation
104 for prescription drugs involving a designated person. The health
105 care regulatory boards may request information from the
106 department but may not have direct access to its database. The
107 health care regulatory boards may provide ~~such information~~ to a
108 law enforcement agency pursuant to ss. 456.066 and 456.073 only
109 information that is relevant to the specific controlled
110 substances investigation that prompted the request for the
111 information. Before disclosing any information to a law
112 enforcement agency, a healthcare regulatory board must take
113 steps to ensure the continued confidentiality of all
114 confidential and exempt information. At a minimum, these steps
115 must include redacting or deleting all nonrelevant information.

116 (c) A law enforcement agency that has initiated an active

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117 investigation involving a specific violation of law regarding
118 prescription drug abuse or diversion of prescribed controlled
119 substances and that has obtained a subpoena issued by a court of
120 competent jurisdiction upon a showing of reasonable suspicion of
121 potential criminal activity, fraud, or theft regarding
122 prescribed controlled substances. The law enforcement agency may
123 disclose to a criminal justice agency as defined in s. 119.011
124 only ~~the~~ confidential and exempt information received from the
125 department which is relevant to a criminal justice agency as
126 ~~defined in s. 119.011 as part of an active investigation that~~
127 prompted the request for the information that is specific to a
128 ~~violation of prescription drug abuse or prescription drug~~
129 ~~diversion law as it relates to controlled substances. Before~~
130 disclosing any information to a criminal justice agency, a law
131 enforcement agency must take steps to ensure the continued
132 confidentiality of all confidential and exempt information. At a
133 minimum, these steps must include redacting or deleting all
134 nonrelevant information. A law enforcement agency may request
135 information from the department but may not have direct access
136 to its database.

137 (d) A health care practitioner who certifies that the
138 information is necessary to provide medical treatment to a
139 current patient in accordance with ss. 893.05 and 893.055. A
140 health care practitioner who receives a current patient's
141 confidential and exempt information under this subsection may
142 disclose such information to the patient or the patient's legal
143 representative. Upon the patient's or the legal representative's
144 written consent, the health care practitioner may place such
145 information in the patient's medical record, including

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146 electronic medical records, and may disclose such information
147 subject to the requirements of s. 456.057.

148 (e) A pharmacist who certifies that the requested
149 information will be used to dispense controlled substances to a
150 current patient in accordance with ss. 893.04 and 893.055.

151 (f) A patient or the legal guardian or designated health
152 care surrogate for an incapacitated patient, if applicable,
153 making a request as provided in s. 893.055(7)(c)4.

154 (g) The patient's pharmacy, prescriber, or dispenser who
155 certifies that the information is necessary to provide medical
156 treatment to his or her current patient in accordance with s.
157 893.055.

158 (4) If the department determines that there exists a
159 pattern of controlled substance abuse consistent with department
160 rules for identifying indicators of abuse, the department may
161 ~~shall disclose relevant such confidential and exempt~~ information
162 that does not include personal identifying information to the
163 applicable law enforcement agency in accordance with s.
164 ~~893.055(7)(f).~~ The law enforcement agency may use such
165 information to support a subpoena pursuant to paragraph (3)(c)
166 ~~disclose the confidential and exempt information received from~~
167 ~~the department to a criminal justice agency as defined in s.~~
168 ~~119.011 as part of an active investigation that is specific to a~~
169 ~~violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s.~~
170 ~~893.13(8)(b).~~

171 (5) An ~~Any~~ agency or person who obtains any such
172 confidential and exempt information specified in pursuant to
173 this section must maintain the confidential and exempt status of
174 that information and may not disclose such information unless

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175 authorized under this section.

176 (6) A ~~Any~~ person who willfully and knowingly violates this
177 section commits a felony of the third degree, punishable as
178 provided in s. 775.082, s. 775.083, or s. 775.084.

179 ~~(7) This section is subject to the Open Government Sunset~~
180 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
181 ~~on October 2, 2014, unless reviewed and saved from repeal~~
182 ~~through reenactment by the Legislature.~~

183 Section 2. This act shall take effect July 1, 2014.